



TRANSCRIPT OF DAY 6 – PUBLIC HEARING

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, 16TH OF APRIL 2024 AT 10.00 AM (AEST)

DAY 6

HEARING BLOCK 6

MS SARALA FITZGERALD, Counsel Assisting
MR TIMOTHY GOODWIN, Counsel Assisting
MR RICHARD KNOWLES KC, Counsel for the State of Victoria
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<THE HEARING COMMENCED AT 10.06 AM

CHAIR: Good morning. Welcome to today's hearing of the Yoorrook Justice Commission. We are continuing our Land Injustice Hearing Block 6 and I would
5 like to ask Commissioner Hunter to do the Welcome to Country, please.

COMMISSIONER HUNTER: So I'd like to start by acknowledging my Elders and my ancestors, all those that come before us to give us voice here today, and since we are talking about environment, I had like to acknowledge that we are on
10 Wurru Wurru Biik which is sky Country. We really need the truth. When Country is unwell, so are we as people. And how we care for and look after Country, particularly the Country we live and work on, is important. I would like to acknowledge those watching, First Peoples. Also if people find this distressing there are on our website some social, emotional wellbeing tools that you can use.
15 But on behalf of my people, Wominjeka, come with purpose, and welcome to the lands of the Wurundjeri.

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

MS FITZGERALD: Thank you, Chair. My name is Sarala Fitzgerald. I appear as Counsel Assisting, and I am assisted by Sarah Weinberg. I would like to acknowledge that we are doing important business today on the unceded lands of the Wurundjeri Woi Wurrung. I pay respects to the people of all the tribes of
25 Victoria who carry the stories of this land.

MR KNOWLES KC: Commissioners, my name is Richard Knowles and I appear with Gemma Cafarella for the State of Victoria in respect of the Minister for Environment, the Honourable Steve Dimopoulos this morning. On behalf of the
30 State of Victoria, I would like to thank Commissioner Hunter for her Welcome to Country this morning. I acknowledge the Traditional Owners on the lands these important hearings are taking place, the Wurundjeri People of the Kulin Nation. I pay respects to Elders past and present. I acknowledge that sovereignty has never been ceded over this land and pay my respects to other First Peoples here today
35 and watching online.

MS FITZGERALD: If the Commission pleases, I will now call today's first witness, the Honourable Steve Dimopoulos MP, Minister for Environment.

40 **CHAIR:** Thank you, counsel. Welcome, Minister.

MS FITZGERALD: Minister Dimopoulos, would you tell the Commissioners your full name.

45 **THE HON. STEVE DIMOPOULOS:** Steve Dimopoulos.

MS FITZGERALD: And you hold the position of Environment Minister for the State of Victoria?

THE HON. STEVE DIMOPOULOS: Yes.

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MS FITZGERALD: Is the evidence you are about to give to this Commission the truth to the best of your knowledge?

THE HON. STEVE DIMOPOULOS: Yes.

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MS FITZGERALD: And you have prepared a witness statement dated 8 March 2024?

THE HON. STEVE DIMOPOULOS: Yes.

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MS FITZGERALD: Are the contents of that statement true and correct?

THE HON. STEVE DIMOPOULOS: Yes.

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MS FITZGERALD: Chair, somewhat unusually, I will tender that witness statement now so it is publicly available immediately. I understand, Minister, that you have an opening statement you wish to make to the Commission.

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THE HON. STEVE DIMOPOULOS: Apologies. Thank you. Thank you, Counsel. Thank you, Commissioners. I would like to begin by acknowledging Traditional Owners of the land on which this important work is being undertaken, the land of the Wurundjeri people, and pay my respects to their Elders past and present. And I want to thank Commissioner Hunter for the Welcome. I want to acknowledge the Elders in this room, their leadership, their courage and their knowledge. I want to acknowledge the courage and determination of all First Peoples who have been heard by the Commission. It takes extraordinary generosity of spirit to come to a public forum and share intensely personal and profoundly lived experience intellect, hope and aspiration.

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I watched Aunty Jill Gallagher's testimony and was deeply moved by her generosity, her leadership, her invitation to us all to recognise the gravity of the devastation of the past to address it and to create a new future together. I couldn't think of a better marker of success of the work being done than of First Nations children and non-First Nations children going overseas talking proudly of their ancient culture right here on those lands. I was really taken by the promise of that vision painted by Aunty Jill. I was really moved by her reference to learning about the Ancient Greeks but not learning about an even more ancient civilisation, the one on her lands - her civilisation. I was taken by that because I have Greek heritage, and I feel grateful to have been born into such a heritage. I feel a sense of belonging and a place in being a an Australian of Greek ancestry. I would feel a greater purpose if we as a nation truly embraced a gift as Aunty Jill called it: The

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gift of the oldest continuing civilisation. If we all cherished it and nurtured and learnt from it.

5 I have been struck by the generosity of First Peoples both as witnesses to the Commission and elsewhere in extending the invitation to non-First Peoples to be part of this future. Given all the trauma of the past and a continuing trauma they face, it is truly a generous invitation.

10 I have been in the environment portfolio for around six months, and in that time in the portfolio and in preparing for the Yoorrook Justice Commission, I have learnt so much, more - so much more about not only the historic dispossession of First Peoples of their lands, but also the continuing impact of that on First Peoples. I have gained a deeper understanding of how important connection to Country is for Traditional Owners. I have also learned how existing legislative frameworks
15 continue to impact and impede self-determination.

While the Commission will in due course publish a report on its deliberations, I am already driven as the Minister for Environment to find as many opportunities for First Peoples-led management of public lands that I can now. These hearings
20 mark a crucial step forward in addressing land injustice, a commitment to hearing the truth about them, understanding the full extent of the impact of them, and, most importantly, charting a path towards genuine healing.

The Yoorrook Justice Commission's work is vital. It is not just about
25 acknowledging past wrongs, but about understanding and addressing the persistent inequalities that exist as a direct consequence of that history. I am committed to listening, learning and acting. The Commissioners' findings will inform the government's actions to ensure that meaningful steps are taken to right the wrongs of the past. Thank you so much for permitting me to have this opening statement.
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MS FITZGERALD: Minister, there are some acknowledgments, and powerful acknowledgments, in your statement that I would like to begin by asking you to read. If I could take you to - beginning with paragraph 13 of your statement, to read paragraph 13, the first sentence of paragraph 14, and paragraphs 15 and 16.
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THE HON. STEVE DIMOPOULOS: Yes. I will not - sorry:

40 "I understand that the proclamation of Crown sovereignty in Victoria set in train events that altered the course of First Peoples' lived - lives in profound ways, and that despite the assurances of the law at the time, that it protected First Peoples and colonists alike, the reality for First Peoples was in stark contrast to these assurances. In relation to my portfolio, I acknowledge that the proclamation of Crown ownership and the allied right of the Crown to sell, manage and make decisions about Crown lands for what was described
45 upon colonisation as "wastelands", formed the foundation of successive Crown and public land legislation and policies and that they continue to form the foundation of current public land management and administration to this

day. I understand and acknowledge the legal framework that enabled the land to be taken from First Peoples and then sold, leased or licensed and reserved for purposes determined by the government also excluded First Peoples from the economic benefits of Victoria's land waters and other natural resources. I
 5 acknowledge that the dispossession of Country and culture has been identified by successful inquiries and Commissions as a matter at the heart of the myriad injustices still being suffered by First Peoples in Victoria. I recognise that the true nature of the dispossession of land in Victoria and the
 10 illegal and policy frameworks that enabled it, enabled the sale of land and other dealings in it by the State have not been fully acknowledged or addressed by the State to date. The existence of ongoing systemic injustice in relation to land has also not been fully addressed. I am mindful of the significance of the opportunity to acknowledge and address these matters."

15 **MS FITZGERALD:** Thank you, Minister. Moving now, Minister, to self-determination in the context of the portfolio that you hold, the Environment Portfolio. The Victorian Aboriginal Affairs framework sets out the self--
 20 determination continuum, which shows the transition from informing Traditional Owners about State action on one end of the spectrum, to transferring decision making and resource control to Traditional Owners. What evidence can you give of whether there has been any substantive transfer of decision-making power or control to Traditional Owners in the Environment Portfolio?

THE HON. STEVE DIMOPOULOS: Counsel, I think there are a range of
 25 examples that come in different parts of Victoria and with both recognised groups and non-recognised groups. They stem from a range of work, and though - I would describe them as two characteristics at least. One is governance, allowing and enabling Traditional Owners to be managing their own lands, and also funding to enable that. They sit within a context of DEECA's - the Department's framework,
 30 "Pupangarli marnmarnepu", which is "owning our future", and that sits within a context of Victorian Aboriginal Affairs Framework that you described. I am happy to list some of those examples, but I - there are many of them. It is nowhere near enough. I accept - absolutely accept that we are effectively trying to retrofit what is and always should have been Traditional Owner-led management of Country,
 35 within the constraints of a colonial legislative framework. But within those parameters there is good work done by a lot of good people, principally Traditional Owners, whether it be in the Wombat Forest or, you know, in Budj Bim National Park and other areas, so I am happy to go into some detail.

40 **MS FITZGERALD:** Well, the Department was asked to identify the policy, strategies and commitments supporting First Peoples' rights and interests, and I suspect that in - I wanted to take you next to some of the barriers that the department identified, and I suspect in doing so we will also be addressing the policies, and if there is anything that is missed in that response. If I could take you
 45 to Annexure B of the Department's response, so this is - the request was to identify the policies, strategies and commitments that support First Peoples' rights connections to Country. Do you have that there, Minister?

THE HON. STEVE DIMOPOULOS: I'm sorry, annexure B, yes, I do.

5 **MS FITZGERALD:** Excellent. Now, am I right in saying - if you look through that document, am I right in saying that -

THE HON. STEVE DIMOPOULOS: Sorry can you identify which document again?

10 **MS FITZGERALD:** Yes, Annexure B, and it is -

THE HON. STEVE DIMOPOULOS: The frameworks.

15 **MS FITZGERALD:** The Self-Determination Framework, sorry, the title of the document. And am I right in saying that captures the Department's policies, strategies, commitments concerning the support that the department provides to First Peoples' interests in and connection to Country?

20 **THE HON. STEVE DIMOPOULOS:** They are the principal documents. There would be, I imagine, many others at a procedural level for decision makers right through the Department, but there would be overarching frameworks.

25 **MS FITZGERALD:** Now, in that response, the Department identifies the barriers that currently exist for full implementation of those self-determination policies. Can you see that in the fourth column?

THE HON. STEVE DIMOPOULOS: Yes.

30 **MS FITZGERALD:** Now, if I can just step through with you - this is the Department's own reflection, is that fair to say?

THE HON. STEVE DIMOPOULOS: That's right.

35 **MS FITZGERALD:** And so would you accept that this is a candid, on-the-ground view of the barriers?

40 **THE HON. STEVE DIMOPOULOS:** I'd accept that it is the Department's view of the barriers. I think that while the Department in engaging in truth-telling would be putting forward, I would hope, an unvarnished view, I think Traditional Owners may share some, or not all of that view.

45 **MS FITZGERALD:** Yes. Now, if we can step through, starting with page 1 - I won't take you to every aspect of the barriers, but I'll just draw on some common themes that come up. The first one coming through is the Aboriginal Inclusion Plan, Munganin-Gadhaba. If you look in column 4, the unvarnished view provided by the Department is that government systems and processes create barriers to

self-determination. And that is a theme that you've already reflected on, that the government creates those barriers. Is that fair to say?

5 **THE HON. STEVE DIMOPOULOS:** That is fair to say.

MS FITZGERALD: And the need to transition to enable First Peoples to lead decision making is still, I suppose, an impediment to full implementation?

10 **THE HON. STEVE DIMOPOULOS:** I think that's fair.

MS FITZGERALD: Moving next to the Aboriginal Self-Determination Reform Strategy that you referred to before in your evidence, Pupangarli Marnmarnepu, "Owning Our Future", the impediment column for that strategy refers to overarching barriers which include the need for sustainable funding reforms and implementation barriers. You accept that that is a current impediment to the full realisation of that strategy?

15 **THE HON. STEVE DIMOPOULOS:** Yes, Counsel, and I hear that from Traditional Owners in my conversations when I - when I'm either on Country or in the office, that is a consistent theme that comes across.

20 **MS FITZGERALD:** One of the other barriers to that strategy is referred to as individual values and philosophies, government budget cycles where funding is sought but budget cuts determine priorities, that may not align with Traditional Owner Corporation needs. You accept that is an impediment?

25 **THE HON. STEVE DIMOPOULOS:** Yes, I do. I do accept that that is an impediment.

30 **MS FITZGERALD:** One candid reflection in relation to that strategy at the very end is that often the priorities of Traditional Owners are in direct contrast to DEECA priorities, and that's the Department's priorities. Do you accept that, that sometimes there is just simply a direct conflict between priorities?

35 **THE HON. STEVE DIMOPOULOS:** Yes, and I could think of several examples including cultural fire burns, for example.

40 **MS FITZGERALD:** Yes. And we will touch on that a little later. Moving on to the Traditional Owner and Aboriginal Community Engagement Framework which is referred on page 3, one of the reflections of the Department is that the cultural capability of staff is a barrier. Do you accept that?

45 **THE HON. STEVE DIMOPOULOS:** I do, I do accept that. And I think there is a power of work gone - that's gone in by Traditional Owners to help us become more culturally capable, but there is a long way to go.

MS FITZGERALD: Moving on to page 4. There is a reference to the Aboriginal Cultural Capability Framework:

5 "Our culture is in our Country and our Country is our culture."

And the reflection from the Department is:

10 "One of the barriers is resourcing, both financial and staffing, and the second is organisational capacity."

Do you accept those current barriers exist for that strategy?

THE HON. STEVE DIMOPOULOS: I do.

15 **MS FITZGERALD:** Again, going down to page 5, Pathway Towards an Indigenous Data Sovereignty Policy. Resourcing is mentioned as a barrier in that in column 4 for that policy. Do you accept that?

20 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: And in particular, recruitment to existing vacant positions, with seven of eight positions vacant as of 1 February this year. Do you accept that as an issue?

25 **THE HON. STEVE DIMOPOULOS:** Yes.

MS FITZGERALD: Moving on to the Aboriginal Cultural Safety Framework on page 6, again, the barriers to implementation have been ongoing resourcing issues and a government restructure. You accept that?

30 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: And then down to page 7:

35 "Statewide Caring for Country Partnership Forum."

At the very end, there is a reference to funding reform legislative and structural barriers; do you accept that?

40 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: We then go to the Victorian Traditional Owner Cultural Fire Strategy which, Minister, you just mentioned. One of the barriers referred to there is there needs to be significantly more investment in Traditional Owner corporations so they can build capacity and capability to deliver the cultural fire programs that they want to deliver, and significantly more investment in DEECA and the Country Fire Authority enabling systems so that they can enable

Traditional Owners to build capacity. Do you accept that, again, funding is a significant barrier to that strategy being successful?

5 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: And then overleaf on page 8, there is, again as you've referred to, Minister, from the department's perspective, and of course this is not Traditional Owners perspective, the Department itself characterises a barrier as:

10 "The need for reform in the myriad of legislative and policy barriers, that create barriers for Traditional Owners participating in caring for Country."

Do you accept that?

15 **THE HON. STEVE DIMOPOULOS:** Of course.

MS FITZGERALD: Then turning to the Victorian Traditional Owner Cultural Landscape Strategy on page 10. One of the barriers is that:

20 "Implementation requires a significantly larger budget than currently available."

Do you accept that?

25 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: And it requires reform in the way public land management plan and managed public land across tenures. And then finally:

30 "Reform in legislative and policy frameworks that create, again, a myriad of barriers to Traditional Owners participating to care for Country."

Do you accept that self-reflection by the Department?

35 **THE HON. STEVE DIMOPOULOS:** Of course, yes.

MS FITZGERALD: And then turning to page 11, the Managing Country Together Framework, one of the barriers is referred to as "capacity" and:

40 "It is a lack of capacity from limited budgets."

So again, in fact, it's related to funding, that more funding is required for this framework to succeed. Do you accept that?

45 **THE HON. STEVE DIMOPOULOS:** I do.

MS FITZGERALD: And that is the balance of the Department's reflections. Noting that we will have a budget announcement in early May, and - firstly I will say, you accept that a large number of those policies, if not all of them, one of the barriers to full implementation is appropriate funding?

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THE HON. STEVE DIMOPOULOS: Yes.

MS FITZGERALD: And in the context that we are about to have a budget announcement, can you tell the Commissioners whether any budget submissions were made to include additional funding for these programs?

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THE HON. STEVE DIMOPOULOS: There were. Thank you, there were budget submissions made. I can't tell you off the top of my head, Counsel, if it relates to every single - every single aspect of those frameworks. But absolutely there were budget bids made. I have to be careful because -

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MS FITZGERALD: Yes, accepting -

THE HON. STEVE DIMOPOULOS: Internal budget process - directly to support Traditional Owners for the capacity to sit within Traditional Owners as opposed to necessarily more for DEECA.

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MS FITZGERALD: And I will touch on that later. So is what you are saying funding towards having more of these roles being undertaken by Traditional Owners and Traditional Owner Corporations than being provided as services by government to those groups, or -

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THE HON. STEVE DIMOPOULOS: Both, in terms of that, but also just in terms of Traditional Owners having the capacity to partner in implementing these strategies, but also to hold us to account in the implementation of these strategies.

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MS FITZGERALD: Commissioners, I was just about to move to new subject matter area. Given we will be moving around a bit today, I thought I might allow time for questions along the way.

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CHAIR: Thank you, Minister. I counted 10 different frameworks and strategies that are in place, none of which seem to be evaluated or monitored or accountable and, as our Counsel pointed out, are all affected by a lack of resources and a lack of capability. What is the point of these frameworks?

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THE HON. STEVE DIMOPOULOS: I feel that they're very important as a - both an actual opportunity to deliver on the ground, and I think much of them have. The funding - I will touch on that, and then if you don't mind I will give you a little bit more detail of the funding. The opportunity to deliver on the ground through effectively changing the public service and changing our operations, Cultural Fire Landscape Strategy is an example - sorry, Cultural Landscape Strategy is an example of that.

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I feel also the point of them is that, effectively, it binds a government. I can understand the - that Counsel read from the column that talks about obstacles and limitations, but obviously that is not in a vacuum. There is an entire other column
 5 which talks about what these frameworks have achieved, and I think in many respects they've achieved some really good things. Nowhere near enough, absolutely accept that. And interestingly if you look at the funding - again, nowhere near enough compared to the need and the appetite, really, for Traditional Owners to take more control of their own lands and more management of their
 10 own lands, but there is been an increase in uplift in funding to Traditional Owner groups, both recognised and not recognised, since the development of the Owing Our Future Pupangarli Marnmarnepu document. And I can take you through some of those examples and -

15 **CHAIR:** I was thinking more in terms of change in the Department.

THE HON. STEVE DIMOPOULOS: Yep. So in terms of changes to the Department, and you touched on evaluation, each one of those has some evaluation. It - we don't think we are doing enough evaluation, and the Department
 20 is - and I - are very interested in evaluation. In fact, to be candid, the last six months, many of these things have come up for conversation whether they be in a budget context or in a context where a Traditional Owner is talking about one of these documents, and I am consistently asking myself, well, what is the efficacy of them, because I get anecdotal and true - true advice by Traditional Owners and I
 25 get different advice sometimes, depending on what room I am in and what Country I'm on.

The Department is working on right now developing at this moment a general evaluation framework for all our agreements with Traditional Owners across the
 30 board, because there are many. Doing that both in the context of actually holding us to account but also in the context of the absolute avalanche of impost on Traditional Owners to be able to meet with us on our terms, effectively, on all these strategies, even though they are cowritten, many of them, just a lot of work for Traditional Owners.

35 The other thing is that we've got the Caring for Country Partnership Forums, which are at the highest levels. So the Secretaries of the Department and Deputy Secretaries meet with Traditional Owners and are held to account. That is a forum where the Department has provided funding for an independent secretariat, I think
 40 it's about \$1.5 million, to hold us to account, on how we are performing with all the work that we have said we are going to do with Traditional Owners.

45 But ultimately, Commissioner, I think there is a point to these, but I think we could do a lot better with evaluation and we could do a lot better in not imposing so much on Traditional Owners.

CHAIR: Could I just ask you to talk about some of the things that have been achieved with - so I recall when this was being planned you said you - could you speak to a couple of things that you think are a good direction or may have been impacted by some unforeseen things, aside from funding?

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THE HON. STEVE DIMOPOULOS: Yeah. Yep. So some positive examples -

CHAIR: I noticed on the first page, you have got "Completed" under the implementation, the fact it is ongoing, and it was heralded as a big move at the time.

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THE HON. STEVE DIMOPOULOS: Yes. Yes. Yes, and - yes, thank you, Chair. I might just go to a couple of those. And I think these two things are related, Chair, both the strategic framework and the funding that flows from it, because without that authorising environment within the Department, I won't think we would have had the same outcome. But DEECA's expenditure on First Peoples-specific programs and services was \$19 million in 2019/20, which is really, I think, fundamentally low, and it is 78 million three years later in 22/23. Now, admittedly - excuse me - admittedly, about half of that is - rests within Traditional Owner control, whether it be TOC - Traditional Owner Corporation or First Peoples' business, part of a whole range of activities that go on, about \$39 million. The rest sits with the Department to help work with Traditional Owners.

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What we've seen, though, over time, is the balance has shifted between the share of the pie going to Traditional Owners as opposed to - as opposed to the Department. So since 1920, TOs have received 43 million in funding compared to DEECA's 20, and I think that's a - the way it should continue to evolve, as is a capacity both within the public service, but also within Traditional Owner groups.

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And for example, I was meeting with DJAARA on Country at the Wombat State Forest and they talked about from - excuse me - from that funding, they have developed their own forest care, forest gardening framework. They've - have, again, nowhere near enough, but they have park rangers, First Nations Traditional Owner park rangers to do that work in the Wombat State Forest and surrounds. Although, to be honest, they were also saying to me that there is nowhere near enough funding to go live out the aspirations of what they have for Country and care for Country. So there is a range of things that work. But there is a range of opportunities to improve those.

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Another example, I think would be it - at Budj Bim, the relationship between fire - Forest Fire Management Victoria and the Traditional Owners, I think it is fair to say from what they've told me is a positive one, and that, I think, also is part of one of these strategic documents in terms of how Forest Fire Management Victoria do their work, so I think there is some good examples about how these document guide the public service to be more culturally capable, a public service to remember that they are actually every - everything they do, anywhere in Victoria on public lands, is actually potentially has a potential for harm. Therefore,

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they need to be navigated through cultural capability frameworks and procedural frameworks about how they do that work. Chair, I'm not sure if I've given you -

CHAIR: You have given me - thanks and thank you.

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COMMISSIONER LOVETT: Minister, a lot of the barriers are related to resources which we have touched upon, but also internal, so we - a lot of time in Aboriginal Affairs, we return to Traditional Owners not having capacity. Now, the Department under your leadership certainly has the resources and the time
10 available to be able to upskill from a capability and a delivery point of view. Can you share us with your expectation on the Department to be able to follow through with these frameworks and policies that they've committed to? What is your expectation on that?

THE HON. STEVE DIMOPOULOS: Thank you, Commissioner. I - I expect that this is fundamental core business for the Department. It's just as core as firefighting in an emergency situation, in my - that's my expectation. It's not an optional extra. We are - we are public land managers, but on land that is not ours. And I think if you took that approach in any other context, you would take a lot of
20 care to make sure that the owners of that land were absolutely authorising what work you were doing on that land. So my expectation is that these frameworks, which have largely been developed and cowritten with Traditional Owners - some have been led by Traditional Owners, like the Cultural Landscape Strategy has been written by Traditional Owners - that they are lived in practice as well as in
25 principle.

My further expectations that I am given - afforded the - the information and the oversight of its performance, regularly, so that I don't have to dig for that information, or have to go out on Country which I - which is a key, it is part of my
30 job, but the Department should be - my expectation is they give me an account of how that is tracking, not from their perspective but from the Traditional Owners' perspective.

COMMISSIONER LOVETT: How often do you receive - naturally, I suppose, you would meet with the Department on a regular basis and get briefings. How
35 often do you get briefed actively by the Department, without you asking, on matters related to Traditional Owner rights and interests?

THE HON. STEVE DIMOPOULOS: That's an interesting question. I - I think it's - if I recollect, most - interestingly, most of the discussions - most of the briefings I have with the Department, and they are weekly across different divisions, there is - there will invariably be a conversation that relates to Traditional Owner interests and expectations and rights. I think what might be missing, and it's just as much my issue as the Department's in requesting this, so
40 I'm not just blaming the Department, is pulling all that together, because Counsel is correct in going through all those frameworks and they seem a little bit scattered. They are there for good purpose and for good reason.

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What perhaps is missing is an opportunity to have an accountability, a dashboard almost, for those any time I ask for it, and not because I am important in any other way other than ensuring the compliance with those frameworks that we've - and
5 the trust we have developed with Traditional Owners. I think that is probably the thing that I - and I did reference earlier that the Department is developing an evaluation framework for all our agreements, but I want a tool as Minister for performance management effectively for my own performance to make sure, because in the end, people make a lot of decisions in my name as they have
10 historically in this position. The Department would have five or six thousand people in it and four ministers. In the end, the accountability rests with us. So that would probably be the missing piece, Commissioner.

COMMISSIONER LOVETT: In that monitoring evaluation framework you are
15 developing to oversight all these frameworks, a lot of frameworks, are you involving Traditional Owner thoughts, needs, aspirations in the development and design of that?

THE HON. STEVE DIMOPOULOS: Commissioner, that - that's my
20 understanding and that is clearly not just my expectation, the government's expectation, but I had have to confirm the detail with the Department, with the work they are progressing at the moment.

COMMISSIONER LOVETT: That is an expectation of yours, I think, you -
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THE HON. STEVE DIMOPOULOS: Without a doubt. The only evaluation that
- I mean, within the constraints of the legal structures we have inherited from colonial times, the only evaluation that matters in this is the evaluation and the views of Traditional Owners.
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COMMISSIONER WALTER: Minister, can you make sure you bring back to the Commission the outline of that evaluation regime as you develop it. We would be interested in that.

THE HON. STEVE DIMOPOULOS: Absolutely.
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COMMISSIONER HUNTER: Can we just - sorry, can I just quickly - you've listed a heap of barriers here in pretty much a lot. But it's the structural barriers that bother me, because you are engaging with TOs consistently, and they're
40 structural barriers, so they're in a colonial setting. So you are asking TOs to be culturally unsafe because your cultural safety plan has never been revised either or evaluated. And so how - how do you gain the trust of TOs to engage with you when nothing's evaluated, the cultural safety - you have got here the cultural capability of staff awareness as well. So there is a range of all these - like, how are
45 TOs supposed to culturally safely engage with the Department and when there's all these barriers?

THE HON. STEVE DIMOPOULOS: It's a really fair question. And I think, Commissioner, there is an aspiration and it lives in practice but not all the time. This - effectively, we expect and I expect all staff, departmental staff, even all contractors, to provide a safe space for Traditional Owners, and I know in some respects it hasn't happened. I think you heard from somebody yesterday in relation to Barmah Forest, for example. There are those situations. I think - and I am not justifying past behaviour and I think we do - we need to do a lot better. But there are really good examples as well where it is culturally - I have been told by Traditional Owners is culturally safe.

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COMMISSIONER HUNTER: But it does need to be culturally safe for everyone who engages, not just one group or two groups. And I'm wondering, are you working towards that, what does that look like cultural safety working towards that, to engage more First Peoples, and to actually even get more employed First Peoples, is there, dare I say it, another framework or strategy, that may or may not be evaluated that would assist in that happening? Because, as I said, when I - in Welcome to Country, when Country is healthy, our people are healthy, and the state of the Country is not, and we have no - I mean we talk about - this is called the self-determination frameworks, and I don't see a lot of self-determination in it.

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THE HON. STEVE DIMOPOULOS: I think - appreciate - I think there's a - we are trying to reorientate a system that was absolutely expressly developed to exclude and to disenfranchise Traditional Owners. You know that better than I from both lived experience and what you have heard in the Commission. In that space, there is a lot of catchup to do, not just in terms of on-the-ground delivery of that aspiration, but also in a public service, effectively, a non-First Peoples public service, a non-First Person's Minister, dealing in a way that is not clumsy and is culturally appropriate and safe, and I think - and I - I think of an example of where cultural safety sort of takes a second back seat to the legislative frameworks that are, you know, colonial is effectively, the Secretary of the Department has the right to effectively make any decision in relation to fire in an emergency situation, or just generally, meeting fuel management mitigation around Victoria, really without reference to, in law, the Traditional Owners. That is completely, like, unacceptable.

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And what we do then below - beneath that sort of legislative framework, we try and develop joint management responsibilities, governance arrangements and funding that follows, including funding to implement these, that - that tries to bridge the gap between what the legislation says should happen and what we know in our hearts should actually happen. And that - and I feel - if I can give you an example of one of those. So there was a - and I will bring it up here, if you don't mind. There was an example at Budj Bim National Park where Gunditj Mirring were in conversations with Forest Fire Management Victoria for years prior to or some time prior to - this comes from Traditional Owners, not just the forest fire people in a briefing to me on Country, years before. So when the 2019/20 bushfires hit and the National Park was unfortunately impacted by lightning, the

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quick action that could - that took place, because of the pre-existing relationships between public servants, good public servants, forest fire management, people who put themselves in harm's way, but the Traditional Owners of the land, meant that different firefighting tools were used and methods which, you know, if you

5 think about emergency services is very hard to do anything different because it is - everything's out the window when you are fighting a fire. They didn't do what they normally do in terms of creating strategic fire breaks because land is far too sacred and important in terms of Aboriginal cultural heritage. They did sprinklers and aviation fighting - firefighting and other - other means. And what I heard from

10 Traditional Owners in that context was that that worked really well and they felt respected and, like, owners of the land in terms of directing Forest Fire Management Victoria in some respects. So they set up an incident control centre and Traditional Owners were embedded into that incident control firefighting

15 centre.

Now, I am not saying it is - we should be applauded for that. That should be normal business, but it hasn't been, and there is no statute that requires that. But what it is - good examples in different parts of Victoria where in the absence of the legislative frameworks, which we are changing, and particularly the Public

20 Land Act which I am happy to talk about later, the revisions to that would - we are trying to bridge that gap.

COMMISSIONER HUNTER: I think the specific examples are great. But it shouldn't be isolated incidents; it should be across the State. It should be across the

25 state. So I won't take up any more time, thank you.

THE HON. STEVE DIMOPOULOS: Thank you.

COMMISSIONER LOVETT: To be clear, the other strategy referenced before was Munganin-Gadhaba which is a Taungurung word for "achieve together". It's

30 important that we pronounce things properly. And the other strategy, Pupangarli Marnmarnepu, Wadi Wadi Tati Tati word for "owning our future". Language is very important.

MS FITZGERALD: Thank you, Commissioner. (Indistinct).

COMMISSIONER NORTH: Page 4 of Annexure B, that framework Culture is in Our Country and Country is in Our Culture. Can you tell us when that

40 framework was first produced?

THE HON. STEVE DIMOPOULOS: I'm sorry, Commissioner, I don't - I don't have that information, but my understanding is it's from 2020 on, but I will have to confirm.

COMMISSIONER NORTH: And can you, just in your own words, encapsulate what the point of the framework is, what it's designed to do?

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THE HON. STEVE DIMOPOULOS: So my understanding is to do what, I think, the aspirations of what Commissioner Hunter has said, which is effectively keep - to make sure the Department in all its dealings with Traditional Owners, all its dealings on Country, on their Country, is done in a way that puts them - it gives
5 them agency and respects their rights.

COMMISSIONER NORTH: That includes training for departmental staff as part of that program.

10 **THE HON. STEVE DIMOPOULOS:** Yes, it does.

COMMISSIONER NORTH: And would I be right in thinking that that is a centrally important feature of any structure that is to advance Indigenous-government relations concerning self-determination?
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THE HON. STEVE DIMOPOULOS: I absolutely agree. It has to live in practice. And that means people have to be trained, have to understand, and have to know, and training is vital, if that was your question, Commissioner?

20 **COMMISSIONER NORTH:** Yes. Yes. And to the extent that policy has failed to be implemented, partly, that is a result of the failure to have this type of capacity within the department - would you accept that?

25 **THE HON. STEVE DIMOPOULOS:** I - I accept that that is one of the drivers of failure. I think the other driver is the legislation that we - that governs public land management in Victoria. I think it's outdated.

COMMISSIONER NORTH: Is that also a result, of course, of the governmental staff structure that hasn't produced action in that area.
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THE HON. STEVE DIMOPOULOS: I think it is also something to do with governments and politicians. I mean, we have a responsibility to change laws and I think we need to take some responsibility for that, and we are reviewing the Public Land Act. So absolutely, Commissioner, I share - I would say yes, it - part of it is
35 absolutely staff and governmental systems. The other part - I mean, perhaps you can use the term "governmental systems" for all of us, but I think we also - we need to do more and better, and I think reforming some of those laws that barely mention Traditional Owners in them would be a very good start.

40 **COMMISSIONER NORTH:** All right. So this is a centrally important framework, and in the Barriers column 4, the last point says:

45 "The Department is committed to furthering the education and training provided to its staff in respect of Aboriginal cultural capability framework".

That - and you have said that's correct. When you look at what's actually happened, it says that the implementation plan is expected to be delivered by June

2024. That's a couple of months away. Can you tell us, will it be delivered in June 2024?

THE HON. STEVE DIMOPOULOS: Commissioner, I could find that for you.
5 These are departmental. These documents drive the behaviour and the conduct of staff in my Department. So I have an expectation when they make that commitment they deliver on it. I don't have the detail of the completion. I trust that that's what it's - if it says July 2024, but I can confirm that with the Department.

10 **COMMISSIONER NORTH:** Well, all the Department is saying is they expect this to be delivered.

THE HON. STEVE DIMOPOULOS: Yes.

15 **COMMISSIONER NORTH:** They're not saying it will be. And I'm just concerned about an emerging pattern of frameworks addressing important issues that go to the central elements of success in these areas, frameworks that, when you get to the pointy end, is saying is it happening, we get statements like:

20 "DEECA is committed to furthering the education and we have an expectation that the plan will be delivered just a couple of months away."

And you can, I expect, sense my frustration in that - in this instance, but probably as emblematic of many other frameworks, principles, guidelines that we see all the
25 time. So in relation to this one, if you're able to update us in a couple of months' time or even now, I think, because of the importance of this particular framework, it would be helpful for the work of the Commission.

30 **MS FITZGERALD:** Commissioner, there will be a break in half an hour, and that might be an opportunity for the Minister to provide an update after the break.

COMMISSIONER WALTER: Can the Minister also give us the date of the start of this framework from when to when. There's no dates there.

35 **THE HON. STEVE DIMOPOULOS:** Can I - Chair, I appreciate the frustration and I think - I don't want to diminish the extraordinary good work and I know that wasn't the inference, that Traditional Owners are doing with us, battling away, then there is aspects of the work that isn't a battle but nowhere near as - the
40 Commissioner said it shouldn't be ad hoc. I think in the space of time of some of these strategic documents, there has been a greater number of these good examples and a bit of practice - a community of learning and practice both amongst the public service, but also amongst Traditional Owner works.

45 And the Gariwerd National Park would be one of those examples where three Traditional Owner groups have come together in a - in a - effectively in a committee of management arrangement that didn't need to happen other than because of their goodwill and the Department's preparedness to adapt and change

what it normally does. I sense the - I get the frustration. I too am a little frustrated in what appears to be really good intentions with a lack of a kind of an oversight, from my perspective. Every knowledge holder - I shouldn't use that term - I suppose, every public servant who has carriage of these in their work, they would be able to tell you quite honestly how they are delivering. The problem for us, for me, is I need to have an oversight of all of them. That is what I will be asking for in the regular framework because I have an accountability to Traditional Owners and more broadly the Victorian community, so I accept the criticism and the frustration.

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COMMISSIONER NORTH: I should explain, when I say my frustration, of course good on me, if you like. But what I am seeing in the Commission's work is that these elements translate into actually suffering in the community. So TOs out there today and members of their community are affected by these barriers and similar frustrations, but it engages with the history that we've heard of, you know, historically really bad treatment. So I think that's why probably - certainly why I see it as centrally important, and I guess that you'd probably agree that this type of framework, it needs to be implemented and expeditiously because it is actually continuing this hurt, not just because we like to see things done and ticked off. So I wanted to explain that to you just so as to not personalise it to my frustration in a hearing.

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THE HON. STEVE DIMOPOULOS: Thank you, Commissioner.

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COMMISSIONER LOVETT: With these frameworks that we've just gone through in detail, are you aware of any of these and the implementation of them linked to executive performance, delivery through their plans?

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THE HON. STEVE DIMOPOULOS: Thank you, Commissioner. I think - my understanding is that I have read somewhere in my preparation that it is absolutely linked to executive performance. But I will again, if you don't mind, because that is the Department Secretary's job come back to you after the break with that.

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COMMISSIONER LOVETT: And also we talked about potential - you mentioned, Minister, about legislation and the current barriers to Traditional Owner rights and interests being recognised and upheld. So on any future reform agenda, you would - would you have an expectation to be briefed in the barriers that will impact on Traditional Owners when that potential legislation is being considered, and also the opportunities for Traditional Owners in the future as well, that that would just form a part of any future legislative reform agenda?

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THE HON. STEVE DIMOPOULOS: Absolutely, I would. And I'd go a step further. Because at the moment in Cabinet submissions, which carry new ideas for new legislation or programs or anything else, there is already in the template, so to speak, for Cabinet submissions, there's also a consideration for Traditional Owner rights and knowledge. But particularly in DEECA, my expectation would be that that wouldn't be just one of the considerations. That would be amongst the key

considerations in the development of any new legislation, because we are literally talking about public land management, and when we are talking about public land, we are talking about land that is already owned by Traditional Owners, so just a slight nuance for me in terms of everything else I deal with in this portfolio and in the other portfolios, I'd expect the consideration of the rights of Traditional Owners would be at their very beginning of the policy development idea, not just as one of the acquittals towards the end.

MS FITZGERALD: Thank you, Minister, and I should have said that at the start of the Minister's evidence. It is planned to break at about 11.30. And so if the Commissioners are content, that also might be a useful time if the Commissioners have had unanswered questions, to the extent that the Minister is able to return with those questions after the break. No break yet.

Minister, many submissions to Yoorrook have noted Aboriginal title as it's bestowed by the Traditional Owner Settlement Act is a limited form of recognition. It might surprise people to know that title does not enable a Traditional Owner to develop their land; do you accept that?

THE HON. STEVE DIMOPOULOS: I do.

MS FITZGERALD: It doesn't allow them to live on the land. That's right, isn't it?

THE HON. STEVE DIMOPOULOS: Yeah, that's - that's correct.

MS FITZGERALD: In your witness statement at paragraph 47, just turning to some raw numbers, you state that:

"About 2,291,488 hectares of land have been either transferred or committed to be transferred into Aboriginal title and joint management arrangements."

That's right?

THE HON. STEVE DIMOPOULOS: That's correct.

MS FITZGERALD: Can you provide a further breakdown of how much has been - already been transferred versus not yet provided but committed to be transferred?

THE HON. STEVE DIMOPOULOS: Counsel, my understanding is that's in the request for information - sorry, the submission we provided in the RFI, and if it's not I will make sure that you get that.

MS FITZGERALD: Thank you. Maybe during the break you can identify the paragraph.

THE HON. STEVE DIMOPOULOS: Yes. Yes.

MS FITZGERALD: It is 300 long. That would be wonderful. If we compare that number of just over 2 million hectares of Aboriginal title to the amount of Victoria's public land that has been transferred into freehold title. In your witness statement at 47, you also state that:

"About 758 hectares have been transferred in freehold title to Traditional Owner group entities."

10 Is that right?

THE HON. STEVE DIMOPOULOS: That's right.

MS FITZGERALD: And a freehold title is what members of the public would understand as owning your land - would you accept that?

THE HON. STEVE DIMOPOULOS: That's right.

MS FITZGERALD: And you would accept that compared to that, the - what is offered in terms of the rights that attach to Aboriginal title are a shadow, if you like, of the rights that are offered by freehold title?

THE HON. STEVE DIMOPOULOS: Right.

MS FITZGERALD: What percentage of Victoria's public land does this transfer of 758 hectares comprise?

THE HON. STEVE DIMOPOULOS: There's about 9 million hectares of public land in Victoria, not all of it State Forest but large numbers, and so whatever that percentage of seven - it is a very small amount obviously.

MS FITZGERALD: I think my maths is it is 0.001 per cent; would you accept that?

THE HON. STEVE DIMOPOULOS: I am sure that's correct.

MS FITZGERALD: So I will just hold you to - there is 9 million hectares of public land and there's a transfer of those hectares of 758 hectares, and we can do the maths on that.

THE HON. STEVE DIMOPOULOS: Yeah. Counsel, I might just - just for clarity, not all that land is State Forest. So about 4 million or thereabouts, off memory, would be State Forest. But nonetheless I think we are squabbling over - it's a very, very small amount.

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MS FITZGERALD: All right. And in your witness statement, you referred to that 758 hectares as transferred or committed to be transferred. Do you know what the breakdown of what's already been transferred and committed is?

5 **THE HON. STEVE DIMOPOULOS:** I can get that for you.

MS FITZGERALD: Thank you. One of the other aspects of the Traditional Owner Settlement Act is that - and of Aboriginal title is that the legislation requires Traditional Owners to jointly manage their land with the State. That's
10 right, isn't it?

THE HON. STEVE DIMOPOULOS: That's right.

MS FITZGERALD: And the Commissioners received a number of submissions
15 about that regime. One of them is from Environment Justice Australia. Are you aware of that group?

THE HON. STEVE DIMOPOULOS: Yes, I am.

20 **MS FITZGERALD:** And in their submission at paragraph 39, they reflect on the requirement of this regime, that joint management involves dual authority and that, from their perspective, it is incomplete or unfulfilled in certain important respects. And I will just take you to what they say specifically. It reflects some of what, Minister, you were saying before, which is that the system itself is the issue.
25 At paragraph 39 of their submission, 39(a), the second half of that paragraph observes that:

"Paradigmatic and operational tensions permeate these practices".

30 The joint management practices, such as, and this is a issue you have touched on, Minister:

35 "References for low-intensity restorative uses of fire on the part of Traditional Owner entities as opposed to industrial burning on a heightened risk environment in the part of State agencies. Existing legislative and regulatory regimes are entirely designed for the latter, for the State's industrial model, and remain silent on the former. Reform of both public management laws and fire management laws in this regard would enable
40 greater scope for justice outcomes in land management."

Do you accept that reflection?

45 **THE HON. STEVE DIMOPOULOS:** Not entirely, because I think it would disown some of the really good work that Traditional Owners are leading with our agencies. And I think one of the examples I gave - I don't think it is always diametrically at odds. I think that would be unfair to some of the advice and opinions I have received from Traditional Owners. So - but I think in the main, as

a - as a concept, of course, as I said earlier, there is - there was legislation that was effectively asserting the Crown's rights over lands that were never theirs and excluding to purposefully exclude Traditional Owners. But I think that paragraph you read was a little bit too binary, because there is a lot of good work going on, like I touched on then. I've got other examples as well. Not to say that is sufficient, nowhere near it, nowhere near it, because I understand that the State has more power, more resources, and sets a tone in many of these relationships, I am not pretending otherwise. But I have also heard some really good reflections from Traditional Owners from Gunditjmarra to DJAARA to others, and I don't want to just accept that paragraph entirely.

MS FITZGERALD: One of the paradigms that is reflected in Environmental Justice Australia's submission is the concept - the collision of worlds, if you like, between the industrial model of fire management and Traditional Owners' model, which is a far more individualised approach. Do you accept in general that this is an issue that government has that it does like to adopt a one-size-fits-all approach in a lot of ways which isn't appropriate with hundreds of different Traditional Owner groups?

THE HON. STEVE DIMOPOULOS: Historically, of course, and the Commission may be aware that, again, you know within the - within the devastation and the absolutely disgraceful actions of the last 230 years in dispossession in every aspect of Traditional Owner life, these things may seem small, but from small things, hopefully bigger things grow. We've had 26 cultural fires in the last 18 months to December - 18 months to December last year, and no legislation, enabling legislation, purely from good leadership from Traditional Owners working with our fire agencies and our Department staff. We are about to release the fire - bushfire management strategy for the whole of Victoria in a few weeks, and some - it's not publicly released, but there's - absolutely a key priority within that is cultural fire.

So historically I absolutely accept what you are saying, and there is an enormous way to go where Traditional Owners are actually afforded their rights they - that are theirs, but I also want to do honour to them in the work they've done to just give you that insight.

MS FITZGERALD: Addressing cultural fire now, the issue has been addressed in the department's response at paragraph 132. And in that response, the department considers bushfire reform and cultural burns, precisely this issue, and states:

"That a key opportunity is to reduce the legislative and regulatory barriers."

You just reflected all of that is being done without any legislative imprimatur:

"To support more cultural burns occurring."

What do you consider at the moment that those legislative and regulatory barriers are?

5 **THE HON. STEVE DIMOPOULOS:** I think principally, the obligations and who is referenced in law to have the obligation for fuel management. That would be principally one, because if you're - if you're that person, whether you are the Secretary or the relevant delegate of the Secretary's, you will be held to account, whether it be in a future Royal Commission on bushfires or elsewhere, you will perhaps be driven by your requirements under that Act, as old and as un-modern
10 as it is. I think there are also traditionally, historically, some known ways of fuel mitigation which really had no reference to Aboriginal cultural heritage and intangible places of heritage and tangible. So - so that's more around the practice of firefighting and the operational practice of it. The example I gave earlier at Budj Bim National Park is an example where you could change that practice to the
15 point and, to your point, Commissioner Hunter, in terms of - I think it was Commissioner Hunter - where we don't want just isolated examples. So from that example, the team, so Gunditjmara and Firefighting Management Victoria have developed a document, a short document conscious of all these frameworks, for the principles of firefighting with having at its centre Traditional Owner rights
20 over cultural heritage. And they're now talking to Country Fire Authority, to DEECA, to Emergency Response Victoria, to try and incorporate that as a normal operating procedure in all firefighting across Victoria. And then I would hope one day, not too distant, that that, then, is accepted in a legislative framework too, so that's just a bit of an example.

25 **MS FITZGERALD:** Thank you, Minister. Just - sorry, I forgot -

COMMISSIONER LOVETT: Could I just jump in.

30 **MS FITZGERALD:** Yes.

COMMISSIONER LOVETT: Do you, Minister, think there is enough evidence there not just from TOs, but from mainstream or the Department, that traditional
35 burns or cool burns or cultural burns, as they've been articulated, actually work?

THE HON. STEVE DIMOPOULOS: For fuel mitigation - for fuel reduction?

COMMISSIONER LOVETT: Could be fuel mitigation, it could be healing
40 Country, trying ultimately to get to healthy Country, cultural burns?

THE HON. STEVE DIMOPOULOS: Commissioner, I can't - I can't really speak with authority on - on that. But what I do know is that from the TOs, Traditional Owners who have spoken to me, they have found it extraordinarily valuable, extraordinarily valuable both in terms of connection but also in terms of
45 ceremony, and they are low intensity generally. So they're valuable - is your question is are they valuable?

COMMISSIONER LOVETT: Yes, from the Department. I mean, the Traditional Owners, we know.

THE HON. STEVE DIMOPOULOS: Sorry, of course.

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COMMISSIONER LOVETT: You know, as a proud TO myself, we know the practice and the value on being able to look after and heal Country, we have done that for 60,000 plus years.

10 **THE HON. STEVE DIMOPOULOS:** Yes.

COMMISSIONER LOVETT: I guess in the mainstream context, though, that's the question.

15 **THE HON. STEVE DIMOPOULOS:** Sorry, Commissioner. Yes, for a couple of reasons. So I've had conversations with the Chief Fire Officer, Chris Hardman, about this very topic. And absolutely he feels his organisation finds it of value, not just in terms of fuel management, as a portion of the fuel management work his agency is required to do under law, but also in terms of protecting heritage and
20 forest care in a way that he may not be obvious to fire - Management Victoria in terms of a forest fire but also in terms of in cultural heritage.

If I make an observation both in relation to this but in terms of some of the opportunities in joint management, I think it is - it is important that the - the public
25 service provide the opportunities that Traditional Owners have been asking for. So in a fire burn, in a cultural fire situation, Forest Fire Management Victoria will determine, because for fuel mitigation reasons to avoid bushfires, obviously, that this part of Victoria will need to be - have fuel reduction. It is then important, in my view, that they provide leadership together with Traditional Owners to say,
30 well, which parts of Country are meaningful and important to be led by you, and are they, and which parts. Rather than just saying, "Well, we are going to do this. And then you can come in on top of it." I think the planning - because obviously - there would be no situation, I don't think, where Traditional Owners would do fuel management across the whole of Victoria. It would be contextual to their lands.
35 And so I think there's an opportunity at the planning stage, and I think - I reference this document that we are about to launch, which is a Bushfire Management Strategy Victoria, that will speak a bit more to those opportunities. But I think those opportunities exist with basically caring for Country.

40 When Parks Victoria - and they're doing more of this, because I have interrogated them and they are - they want to do more of this, but regardless of the requirements to do more, when they contract forest care out to - to somebody that is not Parks Victoria, there should be - and they are increasingly doing this - the first rights given to Traditional Owner Corporations to tender for that work,
45 whether they do it themselves or they then subcontract. It's entirely up to the Traditional Owner. So there are opportunities where - if we made that work job order so large that it was not within the capacity of Traditional Owners to do that

in a particular setting, that's not reasonable. So we have to be - pull out all stops to do what we can to enable Traditional Owner-led public land management from cultural fire to fuel reduction, to any other forest work and care for Country.

5 **COMMISSIONER WALTER:** Is that what is happening now, Minister?

THE HON. STEVE DIMOPOULOS: Beg your pardon, sorry?

COMMISSIONER WALTER: Is that what's happening now?

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THE HON. STEVE DIMOPOULOS: Increasingly, yes. As an example, the most recent briefing we had from Parks Victoria, they are doing more of that. They will say to DJAARA, "Can you do this piece of work", for example.

15 **COMMISSIONER WALTER:** But it's still isolated incidences rather than an actual systemic change.

THE HON. STEVE DIMOPOULOS: I don't want to say to you something inaccurate, so I will come back to you about how isolated it is. This is my interpretation. And it's my expectation that - it's not only - it - because it's meaningful. We learn more from enabling Traditional Owners to access that work because we haven't done an amazing job for 230 years in protecting these beautiful lands, so I mean - I say that with respect to incredible land managers who are non-First Peoples, but we benefit from the knowledge of Traditional Owners.

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COMMISSIONER NORTH: Minister, whilst you're interrupted, can I just take up the question of paragraph 47 of your statement in the transfers that have already been done or are in train. And I just wondered if government had no plans based on particular target figures for further transfers in either category, the Aboriginal title or freehold title.

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THE HON. STEVE DIMOPOULOS: So a lot of those arrangements emanate from the Traditional Owner Settlement Act, and it's - my aspiration is that absolutely more - more opportunities to be provided. It is my understanding it's a DPC-led approach with Traditional Owners, we're the implementers, this Department is the implementers of those agreements. But my aspiration generally is, and particularly the Public Land Act review, which effectively modernises the statutes that relates to public land management, there are three principal statutes, would be - that would give us the opportunity to be able to do more meaningful joint management and then even sole management, where the Minister of the day would have the opportunity, if the Traditional Owner desired it and the minister followed through, was to appoint Traditional Owners as park - as land managers in the same order of magnitude of hierarchy as Parks Victoria is appointed now. So to do everything -

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COMMISSIONER NORTH: That's something less than a full transfer in either of these categories.

THE HON. STEVE DIMOPOULOS: What I've just described is more than that, yes, sorry, it is more than that, more than that.

5 **COMMISSIONER LOVETT:** Repeat that last sentence about the parallels between parks.

THE HON. STEVE DIMOPOULOS: So the - and we've consulted on the first incarnation of the - the Public Land Act or the future Public Land Act with
10 Traditional Owners, but as it sits now, it would entitle - it would provide the opportunity for the Minister for the Environment to appoint a Traditional Owner group as a public land manager at the same hierarchy and level as Parks Victoria is now, so with all those powers. There will be many other opportunities too in terms of cultural - declaring a part of pastoral land as a cultural reservation, but that's -
15 that's the beauty of - and that would then mean they'd have all the same power, there wouldn't be joint management with effectively a non-First People's organisation, whether it be DEECA or Parks Vic or CAPA or any of these land managers now, Traditional Owners would be the relevant land manager. And of course, they could enter into joint management as well with anyone else they see
20 fit. So that they're -

COMMISSIONER NORTH: So Parks Victoria is an independent statutory body, is it.

25 **THE HON. STEVE DIMOPOULOS:** Yes.

COMMISSIONER LOVETT: Who do they report to?

THE HON. STEVE DIMOPOULOS: They - they report to me.

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COMMISSIONER LOVETT: The Minister.

THE HON. STEVE DIMOPOULOS: Yes. It is still deficient in that way, Commissioner, but - but it's probably, can I say - and I am not, you know, the lead
35 Minister on Treaty, but it is probably the furthest we can go in terms of land management, real Traditional Owner-led land management and authority, before a conversation that the Premier and the government will lead from our side on Treaty.

40 **COMMISSIONER LOVETT:** And if Traditional Owners were to want that authority, in your view, how should that be resourced?

THE HON. STEVE DIMOPOULOS: That is a good question. I am projecting into the future now hypothetically. So Parks Victoria is predominantly resourced
45 now. If you look at Parks Victoria as an entity, with a board, a CEO, with, you know, 1,000 staff or thereabouts, or probably more, I can't recall exactly. But they effectively get an allocation from the sustainability fund. The sustainability fund is

replenished through a range of different revenue sources, the municipal waste levy and a few other sources. And every year, the Minister in - with the Treasurer sign off on the sustainability fund to Parks Victoria for Parks Victoria to run their operations. You could see something like that. There are also opportunities for
 5 own-sourced revenue, probably not as large as is required, through car parking fees or other things depending on the land tenure.

COMMISSIONER NORTH: So if an Indigenous body were to be comparable to Parks Victoria, it would require them to be either a - to be a Registered Aboriginal
 10 Party rep or other acknowledged, known, or sort of corporate being, would it?

THE HON. STEVE DIMOPOULOS: It's an interesting question and I don't - because this legislation has not been drafted yet, it is at approval in principle stage, the government gave approval in principle a little while ago and now it is going
 15 out to perhaps a second round of consultations, it could be either one, Commissioner. It could be - I don't have a sense it has to be one or the other at this stage.

COMMISSIONER NORTH: But I thought you said this was something you
 20 could do under the existing legislation.

THE HON. STEVE DIMOPOULOS: No.

COMMISSIONER NORTH: You can't?
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THE HON. STEVE DIMOPOULOS: Sorry for the confusion. This is - apologies, I didn't make that clear. It would require new legislation, but that new legislation is currently in development, and I am excited about it and Traditional Owners have put forward a range of suggestions, ideas and proposals for what it
 30 would include, including the fact that you could declare a parcel of land as a cultural - reserve for cultural purposes for Aboriginal cultural purposes, which it can't do now in law, appointing a Traditional Owner group, and whether it be recognised or not recognised I am not clear, or we haven't developed that, as a primary land manager, in the order of Parks Vic. They are all things that would be
 35 available and more under the revised Public Land Act.

COMMISSIONER NORTH: I think that might be a subject that we will come to.

MS FITZGERALD: Yes, thank you. And certainly we will be returning to that. I wonder if now might be a convenient time for a 15-minute break?

CHAIR: 11.45.

45 **<THE HEARING ADJOURNED AT 11.32 AM**

<THE HEARING RESUMED AT 11.51 AM

CHAIR: Sitting has now resumed, thank you.

5 **MS FITZGERALD:** Thank you, Chair. Minister, there were a few questions that you took on notice for the break. Were you able to identify responses for those within the short time?

THE HON. STEVE DIMOPOULOS: Yes, for most of them.

10 **MS FITZGERALD:** Thank you, Minister, if you wanted to step through each of them.

THE HON. STEVE DIMOPOULOS: So, Counsel, your questions in relation to the amount of land yet to be transferred over to Aboriginal title and freehold. I
15 have got a document here if I can tender it, if that is okay. Now? There is a fair bit. Okay. Okay - apologies - okay. So Gunaikurnai - under the 2013 RSA, the number of parks and reserves committed in the RSA on the Traditional Owner Land Management Agreement, TOLMA, are 10, hectares are 47,235, number of parks and reserves where Aboriginal title has been granted, nine - so there is one more to
20 go - so the total, 29,440. Gunaikurnai, 2022 RSA -number of parks and reserves committed in the RSA TOLMA is four, total hectares is 480,485. The number of parks and reserves where Aboriginal title has been granted at this stage is zero. Dja Dja Wurrung - the number of parks and reserves committed in the RSA TOLMA is six; that's 47,204 hectares. Number of parks and reserves where
25 Aboriginal title has been granted, five, and that is 29,634. Taungurung to 2020 RSA -number of parks and reserves committed in the RSA TOLMA is nine, that's 185,345, the number and parks and reserves where Aboriginal title has been granted - apologies, that's zero. Because it has all been granted, apologies. The Wotjobaluk 2022 RSA, 12 parks and reserves committed in the RSA TOLMA.
30 And that's all 12 have been transferred, and that is 683,473. Sorry if that was a bit confusing.

MS FITZGERALD: Thank you, Minister, and I understand you will provide us with a hard copy of that table in due course.
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THE HON. STEVE DIMOPOULOS: Yes, I will. The other matters that Commissioner Walter raised, and while I will come back with more information because it was a bit of a medium-term question for the medium term, but I wanted to come back immediately on something. The Traditional Owner Agreement
40 Valuation framework to give us accountability and to be more transparent with Traditional Owners, that will be going to the DEECA executive board in July. It's already been once. It's coming back and hope to be out in the second half of this year. That is that one.

45 And, Counsel, if I may, so the Aboriginal Cultural Capability Framework that we talked about at the very beginning, and I think you asked me, Commissioner, when, it was developed in mid-2022. Module 1, it is a series of modules.

Everybody has to do the first module. And then subject to the area of work that you are in, you do subsequent modules. Module 1 will be delivered by July 2024, module 2, 3 and 4 will be delivered by July 2023 - '25, apologies. Currently DEECA has cultural capability training led by the Koorie Heritage Trust. 17 sessions were conducted in October to December 2023. 20 more sessions will be planned from January to July this year, this half of this year. That is a mandatory requirement for executives at DEECA.

To the - I think it was Commissioner Lovett's question about the performance of executives, its engagement with Traditional Owners and cultural capability is part of the performance development plans that executives are held to account for their line manager. Also to note the Executive Board, which consists of all the Deputy Secretaries of DEECA and the Secretary, completed a two-day cultural safety training session at the Aboriginal - Aboriginal Advancement League. This was led by the Aboriginal organisation ABSTAFF.

And the last thing I - this was a big omission because I am just so used to Tom Bell and his team, but cultural safety and cultural capability, while we have a long way to go as I described earlier, the team that Tom leads is a - has been very, very transformative for the Department and for me in our ability to be a bit savvier and smarter and just better at cultural safety, and I don't expect that it all has to be adding further to Tom to that part of the team. I think I would like to see, as I noted at the beginning, more resources go to directly to TOs, so it builds their capacity, because government will always be the more dominant party. But I just wanted to circle back on the issue of cultural safety, that we have a pretty important division team within DEECA to assist us to try and get it right.

COMMISSIONER LOVETT: From my point of view - thanks for that. It would be really good to add, I guess, you know, there is waiting on delivery. Obviously bureaucrats deliver on the government of the day's agenda, but just given what you have highlighted there, that there's further work that needs to be done. I would assume that probably each training, maybe 20 staff would attend, which is a concern, so that means that, you know, out of the ones that you have articulated there, there's still quite a lot of the workforce that needs to be done. But my point here is more weight needs to be given to the delivery of bureaucrats in the context of delivering on our people's rights and expectations, and the commitments that you have committed to in strategies as well. Because I don't think that an equal weight is given per delivery, in my view.

THE HON. STEVE DIMOPOULOS: Appreciate that, Commissioner. And I will - I will consider that this and the earlier conversation we had about and the Commission effectively expressed the view about the accountability of all these things, both through the Executive but also to me as a Minister. And I will develop - I will ask the Department to develop a snapshot of how we can track these. But then I am also equally invested in the tracking, not just the aspiration, but the tracking of these.

MS FITZGERALD: Thank you, Minister. Returning to the issues with joint management in the system as it currently is, and then we will speak more about the reform project in the amendment of the Public Lands Act. Joint management involves Traditional Owners jointly managing public land with the State within a framework that you have already accepted has been created by the State and is in dire need of reform. Do you accept that?

THE HON. STEVE DIMOPOULOS: I do.

MS FITZGERALD: And do you accept that in that environment, joint management cannot be an equal partnership?

THE HON. STEVE DIMOPOULOS: Of course.

MS FITZGERALD: It would be hard for any group of Traditional Owners to be in an equal partnership with the State in that context; do you accept that?

THE HON. STEVE DIMOPOULOS: I do.

MS FITZGERALD: And for that reason, the transfer of land into Aboriginal title, which we have referred to - we've discussed before, with the requirement for Traditional Owners to jointly manage their land with the State, does not enable fully self-determined decision making by Traditional Owners about care for Country, does it?

THE HON. STEVE DIMOPOULOS: No.

MS FITZGERALD: Moving from that overarching problem, can you identify any examples of good outcomes with joint management that you are aware of?

THE HON. STEVE DIMOPOULOS: Yes, I think - and I'm really conscious of what may appear a bit of a hodgepodge landscape rather than a systemic approach, but given the constraints you have just described, there are some - some - so we have - Victoria has two joint management - sorry, has four joint management agreements under the TOS Act. So Gunaikurnai Land and Waters Aboriginal Corporation, Taungurung Land and Water Council, Barengi Gadjin Land Council Aboriginal Corporation, and Dja Dja Wurrung Clans Aboriginal Corporation. They're the four. There are also two cooperative management agreements under the forest land management map with Gunditj Mirring Traditional Owner Aboriginal Corporation and Yorta Yorta Aboriginal Corporation. And because of the context of the language of contested or multiple interested Traditional Owner space in the Grampians, Gariwerd we have an example there of all three Traditional Owners coming together in a framework of joint management, effectively, with Parks Vic. So that is kind of the tectonic working space.

But where I think a good example where we have gone beyond - so we were not driven by the Crown or non-First Peoples conceptual framework of tenure and

ownership - mind you, a lot of areas we are, so I am not pretending we're not. There is an example with DJAARA, with the partnership with DJAARA and Parks Victoria and DEECA, extends beyond the designated Aboriginal title. So DJAARA's aspiration for managing the Wombat State Forest I described earlier.

5 When I was down on Country and listened to what DJAARA had to say, absolutely they talked about, to be fair, time-limited funding. They talked about (a) not sufficient funding to do the aspirations for care for Country that they know and have a right to do, time-limited nature of the funding. Also I think it is important to note the third parties. Counsel, you talked about a couple of those
10 third parties in another context at the beginning, but DJAARA had a forest produce licence issued by Vic Forests where they could use fallen timber from the storm two years ago, as I feel they should rightly be able to use. It's their land. A community group, not Traditional Owners, went to the court and sought an injunction for the whole forest produce licence regime, which means Vic Forest
15 pulled away. And now DJAARA - so DJAARA expressed to me that they feel - I choose my words carefully to - it is a conversation with DJAARA they feel they would want to use some of the produce - some of the resources on their own land for different things, cultural things, opportunities for their young people. So there is a range of things that get in the way not just the power of the State. Absolutely
20 the power of the State is the biggest one, but also other interested parties who have a view. But beyond that, I heard that both in terms of the park rangers, areas that were Traditional Owners park rangers, the move to in that context in other contexts to have the uniform not just say Parks Victoria, but have the name of the Traditional Owner on the other side of the - so it is starting to educate the
25 community about the truth - the truth about these lands.

I spoke to Gunditjmarra, or I listened to Gunditjmarra, really, it - I did most of the listening there. It was an incredible visit on that site, strong leaders with
30 knowledge who, again, issues around the conceptual framework that we operate under. So I will make two points here, a negative one and the positive one. The negative one is that there is a range of issues on the land that they hold, which is, for them, freehold, a portion of it adjacent to the National Park. They have a problem - big problem with koalas eating the Manna gum, and that's one of a number of different issues that they are dealing with as - as people who manage
35 that land and care for Country.

And the concept of - there is a government approach to silos in terms of how you fund things. You fund things whether they are invasive species and there is an
40 invasive species fund to deal with deer or weeds or anything else. There is a fund for land care or biodiversity enhancements. But what I heard loudly and clearly from them and other Traditional Owners was that there is not a whole of Country care funding arrangement, and I'd love to see that, and I have started conversations with DEECA executives about getting to a point where we can potentially fund something as a whole of Country fund as a whole of Country funding outcome.
45 Because in the absence of that, what we are doing is effectively imposing more on Traditional Owners to navigate the system to find bits of funding that collectively ensure an outcome of care for Country in the way they know to care for Country.

On the positive side of that, I heard from two of the leaders of Gunditjmarra how they felt their relationships with DEECA and Parks Victoria, aside from the forest fire management example I gave about how they dealt with the 1925, was a good relationship, they felt supported in their joint management of that land, so there's some things where - might give you an insight, counsel, in terms of -

MS FITZGERALD: Yes, what's working. The Department's response to Yoorrook's Request for Information indicates that a number of Traditional Owner land management agreements involve funding to the State for employment and to carry out on the ground programs. What proportion of those roles are currently filed by either First Nations people or Traditional Owner staff?

THE HON. STEVE DIMOPOULOS: I have the aggregate figures Counsel. I don't have the - I thought it was in the RFI but I may be mistaken.

MS FITZGERALD: So what is the - is that a combination of First Nations and Traditional Owner? What is the aggregate?

THE HON. STEVE DIMOPOULOS: I am not sure. Let me just - Counsel, I might have to get the detail to you. But in aggregate terms, \$39 million of that 78 million in 2023 that I just touched on earlier is funding directly to Traditional Owners, Traditional Owner Corporations or First Peoples businesses. I would say most of it is Traditional Owner Corporations. And that is quite aside from the funding that comes from the DPC-led RSA, Recognition and Settlement Agreement. That would be inclusive of people who care for Country, inclusive of people who work with - could be energy, clear energy proponents who come to seek their advice about potential projects on their land, those opportunities.

And I think I said earlier too that since - financial year 1920, that we have started to see quite a significant shift in that quantum of funds: more goes to TOs as a proportion and less to DEECA, which I think is appropriate.

MS FITZGERALD: Yes. So in the 2022/23 year, the Department has said that expenditure on First Peoples-specific programs and services is 78 million. Half of that is delivered by other organisations, some of that strategy representative bodies. So half of that is still being delivered by the State at the moment?

THE HON. STEVE DIMOPOULOS: So half of that includes the First Peoples division - not entirely but includes things like a First Peoples division in DEECA, cultural capability inside DEECA, yes.

MS FITZGERALD: And -

THE HON. STEVE DIMOPOULOS: I am sorry, Counsel, I did find -

MS FITZGERALD: The proportion?

THE HON. STEVE DIMOPOULOS: I think - I am sorry, this is - so, for example, the same period from 2010/11 financial year to 2023/24 financial year, DEECA and Parks Victoria staff expenditure in relation to statutory regimes, so with Traditional Owner groups, COMA, the RSA, those regimes, equalled \$101.3 million. DEECA staff funding regarding the TOS Act and Native Title Act was \$45 million. DEECA staff funding regarding the Aboriginal Heritage Act was 8.5 million, and Parks Victoria staff funding regarding the AH Act, TOS Act and NTA was 47.8 million.

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MS FITZGERALD: Yes, and my sum on those numbers for public servants administering Traditional Owner legislation and access regimes is 101.660 million; is that right?

THE HON. STEVE DIMOPOULOS: I have got 108.3, but you may be right. I'd have to confirm.

MS FITZGERALD: I would not ever assume that. So 101 something million for the public servants undertaking those regimes. The Department's response at paragraph 5 indicates that the total amount granted to Traditional Owner corporations to administer recognition and settlement agreements and cooperative management agreements between 2010 and the present was 68 million, a little over 68 million; do you accept that?

THE HON. STEVE DIMOPOULOS: That has come from the RFI, I have different figures from a different timeline here, but I accept that.

MS FITZGERALD: Yes, from paragraph 5. So the government is still spending far more doing the work than having Traditional Owners doing the work at the moment, isn't it?

THE HON. STEVE DIMOPOULOS: That's fair. And it is changing. Importantly, it is changing. And, Counsel, can I just - this is just by way of explanation rather than justification. We also have Aboriginal recruitment targets both at Parks Victoria and DEECA and Victorian Fisheries Authority and a range of other agencies. So they sort of, you know, we are sort of trying to scale up a bit. But absolutely the frame is in my view Traditional Owners should have more - more - the lion's share of the resources from that funding pool.

MS FITZGERALD: Commissioners, are there any questions about that issue from you?

COMMISSIONER HUNTER: Just on that last bit, you said - for First People within Fisheries and - who is held accountable if you just don't have - what happens if you don't reach that?

THE HON. STEVE DIMOPOULOS: The employment target?

COMMISSIONER HUNTER: Yes.

THE HON. STEVE DIMOPOULOS: I have an expectation that they do.

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COMMISSIONER HUNTER: If they are not - the expectation is great. We all have expectations, what happens if you don't meet them?

THE HON. STEVE DIMOPOULOS: So at least two things happen. So I have to report to the Cabinet process that - the - Minister Hutchins leads around all these measures. And the second thing that happens is internally, I make sure the Department knows that that is not acceptable for me as Minister. They are public-facing and they are there for a reason. I understand you feel there is a sense of lack of trust in the process. The - they're close -

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COMMISSIONER HUNTER: You have just got all of this - just frustration, like Commissioner North, you have got all these self-determination frameworks in place and, to be honest, I haven't heard much self-determining at all, so, you know, we talk about joint management and all this. We have got these targets to employ Aboriginal people and we are spending more in the department than we are on Traditional Owners, and it is supposed to be - you have got these self-determination frameworks, and I am sitting here waiting for what is self-determining? And as a First Nations woman, I am not hearing much self-determining.

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THE HON. STEVE DIMOPOULOS: Appreciate that. And I think if I step back and look at what government has been trying to do before - I am not claiming they are successes, necessarily, on my watch, because I am absolutely committed to moving the needle on my work by the time that I've left this job.

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COMMISSIONER HUNTER: And I do take on board - six months.

THE HON. STEVE DIMOPOULOS: Yes.

COMMISSIONER HUNTER: So we will be watching.

THE HON. STEVE DIMOPOULOS: Commissioner, if I can just say if I step back it's supposed to be around governance - the self-determining drive, the access points to self-determination, I think, can be categorised into governance, joint management governance, COMA, property management agreements, all those other agreements.

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COMMISSIONER HUNTER: That is all good and well, but joint management we have heard a lot -

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THE HON. STEVE DIMOPOULOS: Yes, that's right.

COMMISSIONER HUNTER: About joint management not really being joint management, because who hold the authority at the end of the day? Government.

THE HON. STEVE DIMOPOULOS: Yes.

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COMMISSIONER HUNTER: We heard from Aunty Marjorie Thorpe yesterday around it not working. I hear it, it is really frustrating for me sitting here again as Commissioner North pointed out with frameworks, all of this stuff, and I am just sitting here going our people deserve better.

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THE HON. STEVE DIMOPOULOS: Definitely understand.

COMMISSIONER LOVETT: Could I ask, what if anything is being done by the Department to work with Traditional Owners to strengthen their capacity through employing more people or resources to be able to help them navigate implementation or even the department itself?

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THE HON. STEVE DIMOPOULOS: So a couple of things come to mind, Commissioner. One is the funding through literally the RSAs and over the last - since 19/20, financial year 19/20, have been 30 million, again, nowhere near enough. I absolutely accept as a matter of fact and something that we need to rectify, the power of the State compared to the power of Traditional Owners is completely disproportionate. But - and some of the investments we have made, \$30 million for the financial year 19/20, Traditional Owner corporations as part of the RSAs, 13 million as part of the cooperative management agreements, strategies like the Cultural Fire Strategy which is 22 million over four years, that is led by Traditional Owners. There is 800,000 off memory per Traditional Owner corporation to actually develop the cultural fire strategy that is contextual for those lands and those Traditional Owners, and then the delivery of that with the relevant co-joint manager. There is funding for example the marine and coastal sea Country grants, spatial planning program. Then funding directly Traditional Owners to develop plans and frameworks that help them posture and navigate out to us how that land should be -

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COMMISSIONER LOVETT: Can I jump in, thanks. From a resourcing perspective, have you as a Department considered or are undertaking secondment-like roles where they are seconding your staff to Traditional Owner organisations to help them strengthen their capacity? Is that practice being undertaken?

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THE HON. STEVE DIMOPOULOS: I don't know, but I think it is a fantastic idea. I'll have to - I hear that - it is happening, Commissioner, I would like to see more of that. That would be extraordinarily valuable for the department, for the public service.

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COMMISSIONER LOVETT: A lot of these Traditional Owner groups are not large organisations with, you know, hundreds of staff. Now, the Department

invests a lot of money in the corporate side of the business around training and professional development, maybe not so much in delivering on cultural awareness and cultural safety as we have highlighted today, but there's other trainings around financial management but also engagement in a whole heap of myriad of things the Department undertakes. I think it would be great if Traditional Owners had access to the Department's capability-building mechanisms, because they don't have the resources to be able to bring people in to train their staff up.

THE HON. STEVE DIMOPOULOS: Thank you, I agree, Commissioner, I think - it is an idea I would like to take up further outside of the Commission hearing with the Department. I think if I can just briefly look back - we seem to do a little bit better than we have ever done, in terms of funding a resource or multiple resources including independent secretariat in the Caring for Country Forum that holds us to account. We fund something that sits within the Traditional Owners, but then it is time-limited often and insufficient often. I absolutely hear your - your call to action on that. I appreciate that.

COMMISSIONER LOVETT: I think it would be good to hear before the end of the day about the department's recruitment and retention of our people in the department as well. I think it's really important that also whilst you are investing in Aboriginal staff, in particular Victorian Traditional Owners working for the department around what career opportunities and prosperity that they can derive from being able to work in government, to upskill themselves and contribute as well.

THE HON. STEVE DIMOPOULOS: Thank you, Commissioner, will do. We will get that information.

MS FITZGERALD: Thank you, Minister. Just moving on to the issue of the revenue that the State obtains from natural resources, particularly insofar as they relate to public lands. Annexure D to the department's response relates to grazing and government land licences, and that annexure indicates that the State has received \$508.49 million in revenue from grazing and government land licences since 2010.

COMMISSIONER NORTH: Is this a document we have, Ms Fitzgerald?

MS FITZGERALD: Yes, yes, Commissioner, it is. 2D, Annexure 2D to the Department's response to the request for information.

THE HON. STEVE DIMOPOULOS: Counsel, is it that one?

MS FITZGERALD: Yes, and the - and it is the third sheet of that in which the annual revenues for the department, Parks Victoria, Alpine Resorts Victoria, and the Great Ocean Road Coast and Parks Authority are listed.

THE HON. STEVE DIMOPOULOS: Don't have the third one with me, if the Department could provide me one, but I do have other information, Counsel.

MS FITZGERALD: What -

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THE HON. STEVE DIMOPOULOS: I did have -

MS FITZGERALD: So that relates to grazing and government land licences. And essentially what I am putting to you is that the maths of all of those columns, 1, 2, 3, 4, 5, 6, 7, 8, 9, adds up to a little over \$508 million. Do you accept that?

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THE HON. STEVE DIMOPOULOS: Not having the same document in front of me, I'm sorry, that you do, but I do accept it.

MS FITZGERALD: Really the question - the real question I have for you is whether you know whether any of that grazing revenue was distributed to Traditional Owner groups?

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THE HON. STEVE DIMOPOULOS: I understand it wasn't.

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MS FITZGERALD: So none.

THE HON. STEVE DIMOPOULOS: None.

MS FITZGERALD: And the Department's response at paragraph 197 indicates that as part of the transition out of commercial native timber harvesting in State forests, the Victorian Government has notified the Commonwealth that its five regional forestry agreements will end at the end of this year; is that your understanding?

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THE HON. STEVE DIMOPOULOS: That's right.

MS FITZGERALD: And Annexure D to the Department's response lists the forestry and forestry products revenues. This is easier, because it doesn't involve any maths, but in the Department's response, they indicate that the State received \$1.385 billion in revenue from sales and income and royalties from commercial native timber harvesting from 2010 to the present. Do you accept that?

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THE HON. STEVE DIMOPOULOS: I do.

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MS FITZGERALD: And how much of that revenue has been distributed to Traditional Owners under the land use - the template in formula C, the community benefits formula?

THE HON. STEVE DIMOPOULOS: My understanding is none. None of the revenue.

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MS FITZGERALD: Do you understand why none of the revenue has been distributed under that mechanism which was meant to provide for distribution to Traditional Owners?

5 **THE HON. STEVE DIMOPOULOS:** Counsel, I can give you the official answer and then maybe the technical answer. The official answer is because it never met the threshold. But the real answer is the threshold was set in a way to exclude Traditional Owners. That's the reality.

10 **MS FITZGERALD:** Yes. And government has always had control over the inputs into that threshold, haven't they?

THE HON. STEVE DIMOPOULOS: That's right.

15 **MS FITZGERALD:** And the levers by which you might meet the threshold have never been in the power of Traditional Owners, have they?

THE HON. STEVE DIMOPOULOS: No.

20 **COMMISSIONER NORTH:** Is that intended to be changed.

THE HON. STEVE DIMOPOULOS: There is a range of revenues sources that have come into DEECA so the figures here I have got \$248 million from the 21/22 financial year, the last data we have, and then of course a whole range of others
25 over time. Those matters - they come into DEECA. Effectively, they go straight into consolidated revenue. So the way I access them as a Minister is by putting in a budget bid to Treasury - to the Budget Finance Committee of Cabinet, so they are not necessarily mine to change. They are absolutely - I would imagine the whole of government - would be part of a whole of government conversation and
30 probably the most appropriate mechanism would be Treaty, but, you know, that is not necessarily for me to determine.

But if - if I take what Counsel's - the example that Counsel gave, Alpine Resorts Victoria, 66 million as an example, that goes straight into consolidated revenue,
35 and then you have an appropriation from that general consolidated revenue to then pay for the operations of different things you are doing, alpine resorts or other things. So I can't necessarily - I can't at all redirect that money myself. The broader question, though, that is, I think, an appropriate conversation for whole of government in terms of revenue sources to Traditional Owners.
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COMMISSIONER NORTH: The community benefit payment under the RSAs, or the particular agreement, are they - how are they funded? Are they a separate appropriation? or -

45 **THE HON. STEVE DIMOPOULOS:** That is a good question, Commissioner. My understanding is that that would - I am confident that my understanding is correct. The Treasurer would sign off if it met the threshold. That threshold which

we have accepted - I have accepted is probably set for the exact opposite reason, not to - for Traditional Owners not to meet. It is historic, you know, that - the Treasurer would have to sign off, if so, if the entity met the threshold then -

5 **COMMISSIONER NORTH:** Apart from the thresholds, I mean there are some community benefit payments that have been made, not -

THE HON. STEVE DIMOPOULOS: As part of the RSA, yes. It is - okay. They come -

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COMMISSIONER NORTH: Where they come from is what I am getting.

THE HON. STEVE DIMOPOULOS: Sorry, Commissioner, I misunderstood your question. I will have to clarify from the Department where they come from. But I imagine it would be consolidated revenue and it would require the Treasurer's sign off.

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MS FITZGERALD: Thank you, Minister. I should just correct the record in terms of my reference to the 508.49 million. I think I referred to as a grazing and government land licences. It is set out in Annexure 2D as relating to moneys made by the State in various ways from public lands, and I will just refer the Commissioners to the detail of that Annexure in 2D.

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THE HON. STEVE DIMOPOULOS: The figure I have, Counsel, for the 13-year period from 2010 to 2023, total nominal revenue sum from grazing and government licences and forestry is more than 1.89 billion.

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MS FITZGERALD: As you understand it, how much of that 1.89 billion was distributed to Traditional Owners?

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THE HON. STEVE DIMOPOULOS: As I understand it, none.

MS FITZGERALD: Just moving now to some historical matters. In 1998, the State granted - this is from the Department's response, at paragraph 208:

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"The State granted a perpetual plantation licence to Hancock Victorian plantations under the Victorian Plantations Corporation Act 1993."

Are you aware of that?

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THE HON. STEVE DIMOPOULOS: I am.

MS FITZGERALD: And:

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"The State has received 550 million in revenue from that grant".

Is that correct?

THE HON. STEVE DIMOPOULOS: That is my understanding, yes.

MS FITZGERALD: And how much of that revenue was distributed to
5 Traditional Owners?

THE HON. STEVE DIMOPOULOS: My understanding is none of it was distributed to Traditional Owners.

10 **MS FITZGERALD:** Are you aware of whether the Victorian Government has been able to gain access to any documents relating to the implementation of that Act, the Victorian Plantations Corporation Act, or the granting of that perpetual plantation licence to Hancock Victorian Plantations?

15 **THE HON. STEVE DIMOPOULOS:** So, Counsel, this is something that I have sought advice on, because clearly it is important, as everything else we are discussing. The records that are available to DEECA don't identify whether or not
20 consideration was given to the important matters of Native Title which I think you are going to. So we have some documents, but they don't - don't identify whether Native Title consideration were made at the time for Traditional Owner rights in the introduction and implementation of the VPC Act in 1993 and the amendments to the Act in 1998. I don't think there were many documents.

MS FITZGERALD: Yoorrook was provided with a departmental memo from the
25 Department of Conservation and Natural Resources in 1993. And if I could just ask the operator to bring up that document, which is DEEC.9010.003.0788, up on the screen. If we can go, in fact, sorry, to 0787, the page before that. Do you have a copy of that, Minister? You may have a copy. It is bright yellow. If it is in your file, it will be bright yellow.

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THE HON. STEVE DIMOPOULOS: I don't have it.

MS FITZGERALD: I might ask - just - if you can read it - I might cause you to injure yourself. Now, Minister, you can see from - this is a document that
35 Yoorrook was provided in response to a request - a Notice to Produce. In paragraph 1, you will see that its purpose was to provide information to the executive of that Department on issues arising out of the Mabo decision. Can you see that?

40 **THE HON. STEVE DIMOPOULOS:** I can.

MS FITZGERALD: And at paragraph 4, it says that:

45 "Department of Premier and Cabinet had established two working groups involving Victorian agencies, one dealing with legal issues convened by DPC, the other dealing with legal issues convened by the Department of Justice.

And the writer of this memo was representing to the Department of Conservation and Natural Resources was representing the Department at those meetings. Can you see that?

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THE HON. STEVE DIMOPOULOS: Yes.

MS FITZGERALD: And then if we go down to paragraph 7, you see that the memo states that:

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"While no formal government position has been established, Department of Premier and Cabinet and Department of Justice representatives, I suspect under instruction, are arguing against any national approach, that is, more than an agreed set of principles. The principal argument is that claims will be fewer and with less chance of success in Victoria and it is therefore not appropriate to adopt a solution designed to deal with the situation that exist in the remote areas of the larger states and territory".

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Do you see that?

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THE HON. STEVE DIMOPOULOS: I do.

MS FITZGERALD: Just going to paragraph 8 of that departmental memo, in the second sentence of paragraph 8:

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"This departmental representative who has been on the Government working groups to deal with the Government response to the Mabo decision is, in that second sentence, suggesting to the Secretary of the Department that it was clear that all Crown grants, most forms of leasing, and many forms of licensing will effectively extinguish Native Title."

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Do you see that?

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THE HON. STEVE DIMOPOULOS: I do.

MS FITZGERALD: And then the memo concludes at paragraph 15:

"Because of historical circumstances in Victoria whereby Aboriginal groups were dispossessed and displaced to a very significant degree, thereby breaking their customary association with their land, and because of the relatively few areas of land that have not been subject to some form of land dealing in the past, claims in Victoria will be difficult to prove. The impact here of the Mabo judgment will not be of general significance. However, there will be some claims and, in some limited areas, is a potential for them to succeed."

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I want to suggest to you that this paragraph indicates that at the time, the Victorian Government accepted that First Nations people had been dispossessed and displaced to a very significant degree, but that there was - I will just put that to you firstly. There was a recognition at the time that dispossession of a significant degree had occurred.

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THE HON. STEVE DIMOPOULOS: The writer of this memo certainly did - I am not sure about the whole Victorian Government.

10 **MS FITZGERALD:** But the departmental representative of the - what was then Conservation and Natural Resources did.

THE HON. STEVE DIMOPOULOS: Yes, I accept that, yes.

15 **MS FITZGERALD:** And it is true to say that at that point, there was no proposal to pay compensation of any kind at that time, was there?

THE HON. STEVE DIMOPOULOS: Doesn't seem to be, from this memo.

20 **MS FITZGERALD:** The memo's dated 24 February 1993, and the legislation that we were talking about earlier, the Victorian Plantations Corporation Act 1993 came into force shortly after this memo was written. Is it fair to say that when that Act was introduced, at least within the Department, there was a view that dealings in land of the kind that the Act authorised - sorry, dealings in land of the kind the Act authorised the Treasurer to enter into, in future, would effectively extinguish Native Title?

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THE HON. STEVE DIMOPOULOS: Sorry, I'm sorry, Counsel -

30 **MS FITZGERALD:** I know, it was a terrible question. We have seen that the author of the memo, who is representing the department in these groups, has suggested to the Secretary that it is clear that licences over land will extinguish - will effectively extinguish Native Title.

35 **THE HON. STEVE DIMOPOULOS:** Yes.

MS FITZGERALD: That is the legal conclusion. And then we have this legislation, the Victorian Plantations legislation which allows for the granting of licences, so whether there was any intention or not, there was an awareness that -

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THE HON. STEVE DIMOPOULOS: Yes.

MS FITZGERALD: Granting a power of that kind would extinguish -

45 **THE HON. STEVE DIMOPOULOS:** Yes.

MS FITZGERALD: Would facilitate the extinguishment of Native Title; do you accept that?

THE HON. STEVE DIMOPOULOS: Yes, I do.

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COMMISSIONER LOVETT: Reading that, how does that sit with you, reading that? Having that being read to you, how does that sit with you?

THE HON. STEVE DIMOPOULOS: I got an emotional response reading it, actually, how unjust it is, how - not only unjust, but how this is - I remember the response I had in reading the last paragraph was how that was not a government for Traditional Owners. It was a government against Traditional Owners.

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COMMISSIONER LOVETT: It's come from the public service, serving the public.

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THE HON. STEVE DIMOPOULOS: Yes.

COMMISSIONER LOVETT: So -

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THE HON. STEVE DIMOPOULOS: It's extraordinary.

COMMISSIONER LOVETT: So disrespectful to say the least. How about our people listening into that, watching and sitting in this room but also watching? It breaks our hearts.

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COMMISSIONER NORTH: It's wrong. It is turned out to be just historically wrong advice. I mean they've been - there have been Native Title claims in Victoria that have succeeded over very large areas. So it was just misconceived, because it was - it was penned without the experience of the developing jurisprudence of Native Title. And the way they read - whoever wrote this read Mabo in a way which the courts didn't thereafter agree with.

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COMMISSIONER LOVETT: I guess my point is, though, this is this historical, and even contemporary historical, views of 1993. This is not going back to 1840s, when the massacres started. This is 1993. This is the views. This is what our people have continually had to put up with. And we wonder why society always thinks about why we are over-represented in different facets in the justice system, child protection system and so forth. We are continually shut out as evidenced today and days gone past about the views of our people and our ongoing rights to these lands and waters that we now call Victoria.

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MS FITZGERALD: I was going to move on shortly, so if there are any other questions, I'll -

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THE HON. STEVE DIMOPOULOS: I - if I could just - this is a very powerful moment. I am just reflecting, it is also a denial of the creation of intergenerational wealth.

5 **COMMISSIONER LOVETT:** In particular going back to that point made before about the - can we just repeat that again counsel, about the billion dollars that we didn't receive any -

MS FITZGERALD: 1.89 billion.

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COMMISSIONER LOVETT: And how much of that was given to TOs again?

MS FITZGERALD: It had zero.

15 **COMMISSIONER LOVETT:** That was confirmed, zero. How could we build intergenerational wealth to pick up the point you made there if we are continually shut out of the system, evidenced by this example and many others we have already heard in the short amount of time we have been having land injustice hearings? And I'm sure potentially we may hear more. We can't get ahead as a
20 people.

MS FITZGERALD: And, Minister, obviously the writer of this memo is not here for me to cross-examine. Just reflecting on the words used in paragraph 8, though, it seems clear that all Crown grants will effectively extinguish Native Title. There
25 is a sense in which the use of the word "effectively" is used in a positive sense, that what one is hoping to do as part of the State is to really extinguish it. Do you accept that is - that is a valid reading of those words.

THE HON. STEVE DIMOPOULOS: That was my emotional response to this set of words, that this was not a government that was interested in looking after
30 the rightful owners.

MS FITZGERALD: And so if Traditional Owner groups draw a coincidental - draw a connection between the introduction of the plantations legislation in 1993
35 and these views about what it might do, and if Traditional Owner groups take the view that there has been an intention to extinguish Native Title, that is not an unreasonable view on the basis of these documents, is it?

THE HON. STEVE DIMOPOULOS: I am just conscious that - this seems to
40 have exactly those -

MS FITZGERALD: Connotations.

THE HON. STEVE DIMOPOULOS: Connotations. And also reflecting back on
45 the government of that day, it doesn't seem inconsistent. However, I don't have all the information to reflect on the decision maker at the time's judgment. I say this just in the abundance of caution for no other reason other than just I think it's fair

to - there's a whole bunch of other information that might be relevant, but this on its own is an awful reading.

5 **MS FITZGERALD:** And given it is directed in particular at Native Title, do you consider it to be racially discriminatory?

10 **THE HON. STEVE DIMOPOULOS:** Can I tell you what I consider it is to - on its own to have denied Traditional Owners what's rightfully theirs, even a seat at the table for the conversation. That is what I consider it to be.

15 **MS FITZGERALD:** And accepting that in paragraph 9, there is a reflection that it's unclear what reservation will do, which is what the Act did, but there was a view about what leasing and licensing would do, so some things were clear, some things were unclear, and that was the position.

20 **THE HON. STEVE DIMOPOULOS:** Yes, yes.

25 **COMMISSIONER HUNTER:** Can I add, looking at this and given the attitude that is not that long ago in government, and reflecting on all your policies and frameworks of self-determination, does that make you realise now how and why self-determination for our people is so important?

30 **THE HON. STEVE DIMOPOULOS:** Yes, it does, absolutely.

35 **COMMISSIONER HUNTER:** These attitudes and the writings of these are constantly, throughout the Commission, coming forward, and our people hear and see this constantly. And so to take self-determination frameworks seriously when you are giving this is really hard on our behalf. So I hope those promises of re-evaluating them, of looking at them, so our people, come another truth-telling Commission down the road, don't have similar things they have to read. It is just as Commissioner Lovett said. It is actually - I am actually at a loss when I read it the first time. I'm at a loss for words because unfortunately this is more trauma for our people that is added on. I would hate to see more documents like this. You would read that as an historical document, really, until you look at the date. It is not that far in the past.

40 **THE HON. STEVE DIMOPOULOS:** No.

45 **COMMISSIONER HUNTER:** So I'm hoping that when - you know, that documents that are uncovered from here on, particularly around self-determination and what that looks like, have a much better read, and are actually implemented in a much better way.

COMMISSIONER WALTER: And the failure to distribute any funds that have come from those lands to First Peoples doesn't indicate to me that there has been a significant shift in attitude. Good words, but no - no follow-through.

COMMISSIONER LOVETT: One other thing I just want to make about this document, I can't help but draw the parallels: 1993, the Yorta Yorta claim, and the active role of the Victorian Government at that point in time is of a similar era and timeframe around the mindset of bureaucrats, or public servants, and then hearing
5 the evidence from Uncle Graham yesterday about the active role of the government at that particular time to work against that claim being successful. Further evidence here, active. I just want to make that point as well.

THE HON. STEVE DIMOPOULOS: Chair, if I could say, then, and
10 Commissioner Hunter, to your point and Commissioner Lovett's point, there is probably a reading of this as well which the drafter of it or the recipients of it didn't even think they were doing anything wrong. It was normal business for them. That is how - potentially how completely out of the knowledge or sync they were with the rights holders. And I accept your - your insights and observation and
15 to say in the continuing of complete working against Traditional Owners to inclusion to rights holders and knowledge holders, I still feel there is a long way to go, but I am so thankful, in some respects, at least at some level, we've learnt at some level.

COMMISSIONER HUNTER: Do you think there should be a bit of sensitive training around this particular memo that could be really helpful for staff? Because
20 you never know where these documents are going to turn up, right, and it is really - it is hurtful to read it as a Traditional Owner of these lands. Thank you.

COMMISSIONER NORTH: I guess it does just emphasise the importance of what we were talking about before about the strategy framework to educate public servants because people educated in contemporary thought wouldn't have written that, even though of course that was in a very different era.

COMMISSIONER LOVETT: The Yorta Yorta Native Title determination was
30 lodged in February, 21 February 1994. This was 11 months prior to that.

CHAIR: Didn't want a first case, successful case in Victoria ever.

COMMISSIONER LOVETT: 1994, a year after.

MS FITZGERALD: I will move to a reform with the Public Land Act in a second. I wanted to quickly touch upon the issue of the acquisition of new
40 National Park areas. Are you aware that there has been lobbying by at least one environmental group for the government to acquire forestry lands, for example, in the context of the forest industry wrapping up in certain areas, to rededicate those lands as national parks?

THE HON. STEVE DIMOPOULOS: I am, but I'm also conscious that we have
45 made some commitments as a government to add to the National Park estate, and that they will be before the Parliament very soon.

MS FITZGERALD: And there are considerable areas of land in, as you have said, the National Park estate and also in the forestry estate in this state?

THE HON. STEVE DIMOPOULOS: Yes.

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MS FITZGERALD: Are you aware that, around the world, lands that are lived on, owned and managed by indigenous peoples are the best managed lands in terms of the health of the lands themselves?

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THE HON. STEVE DIMOPOULOS: It wouldn't surprise me.

MS FITZGERALD: Victoria's First Peoples would say that they managed the lands of Victoria for 60,000 years in a manner far better than the current regime does. Would you accept that?

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THE HON. STEVE DIMOPOULOS: Yes.

MS FITZGERALD: If you accept that the lands lived on, owned and managed by First Peoples are the healthiest, as a matter of logic, the proper arrangement for conservation lands is to transfer ownership of those lands to First Peoples. Do you accept that?

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THE HON. STEVE DIMOPOULOS: I accept, because it's a whole - there is a Cabinet process, a government process. What I accept is that the best for land conservation, to use your language, let alone everything else about civilisation and culture and connection to country, the best for conservation is First Peoples-led custodianship over public lands for the benefit of all Victorians.

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MS FITZGERALD: It's the best environmental outcome. You accept that?

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THE HON. STEVE DIMOPOULOS: (Nods head).

MS FITZGERALD: Moving to the reforms that are being done of the Public Land Act, before the break, you mentioned that the legislation hasn't been drafted yet, and is going out to a second round of consultations; is that right?

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THE HON. STEVE DIMOPOULOS: Yes, that's correct.

MS FITZGERALD: And as I understand it, the consultation for round 1 closed in May 2021, so that is about three years ago. What has been happening in those three years?

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THE HON. STEVE DIMOPOULOS: It's - it's taken a little bit longer than - than perhaps it should have, and where we are at at the moment is that the Victorian Cabinet, the Cabinet gave an approval in principle, which is effectively the penultimate stage before a bill arrives at Cabinet for endorsement, before it goes into the Parliament. So we're at the penultimate stage. What that does is it provides

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the next level of consultation which is a little bit more detailed and granular. We have already been driven largely by - from the beginning of this journey, by Traditional Owners in what they want to see in terms of aspirations in this new Public Land Act. And - so this next stage which I understand from the department, and I expect will be going back to Traditional Owners in the middle of this year to get to the point where a bill can come to the Cabinet. My expectation is that that's early next year, or as soon as possible next year, for it then to be introduced into Parliament once Cabinet considers it. So I - other than the fact that we have had a change in Ministers, a change in premiers, an election in between, it's probably taken too long.

MS FITZGERALD: It has been a long time coming. Given that a number of the strategies that you have spoken about really turn on this reform, there is a lot riding on it. There has been a long time coming, hasn't it?

THE HON. STEVE DIMOPOULOS: It has.

COMMISSIONER NORTH: It started in 2018, am I right about that, or -

THE HON. STEVE DIMOPOULOS: I understand, Commissioner, it is 2021, but I may be mistaken.

MS FITZGERALD: My note has consultation for round 1 closed in May 2021.

THE HON. STEVE DIMOPOULOS: Although, Commissioner, I think if you go back far enough, there would be people calling for that Act or for those Acts to be modernised for the best part of a decade or two.

COMMISSIONER LOVETT: Can I ask in the context of reviewing the Act, what resources have been provided to TOs to engage with their members and their groups to be able to get that, you know, authority of advice back to you about what they wanted to see and expect through that process?

THE HON. STEVE DIMOPOULOS: Commissioner, before - so beyond the core funding, which, again, I've accepted is not sufficient, before the core funding, the consultation groups to engage with DEECA or government, I don't know whether there was core funding for the purpose of Traditional Owners engaging on this Act. But I can get that information at the end of the hearing. But I think that would be very appropriate. This - this Act could not be written without the leadership of Traditional Owners - the Act could not be rewritten without the leadership of Traditional Owners. It is that profoundly important for the things we can do together.

COMMISSIONER HUNTER: I think Commissioner Lovett's point there comes to them being able to also engage with legals and understand it better and understand the loopholes and things like that, because that is - that should be - we are always asking our TOs or Aboriginal orgs to consult or give advice. Again,

that's what they are funded for, but it comes on top of a lot of work that has to be done. I think it is such a good point I would love to know if it was, because you know, I am sure they don't just have lawyers sitting there ready to - ready to consult with them, so I think, you know, it's a really good point.

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THE HON. STEVE DIMOPOULOS: Accurate. Commissioner, it would be consistent with what Traditional Owners have told me, both in the office and on country about engagement for other purposes as well. What I have got here is that DEECA - they've done extensive engagement with all 11 Traditional Owner groups, and other interested parties that are not formally recognised, but I will come back to you on the resourcing specifically for that.

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COMMISSIONER NORTH: Minister, can I just clarify something in my mind from what you said about funding. In the discussion about revenues from land, which appropriately should impart - go back to the Traditional Owners, but it doesn't. It goes, as you have described, into consolidated revenue. And then from consolidated revenue, different projects are funded annually. And it just occurs to me that there are precedents, aren't there, for some areas of funding to be the subject of an appropriation, like a legislative appropriation, which is ongoing so you don't have to have an annual budget bid. And what I'm thinking is whether there had been any discussion or whether it is possible as a way of addressing this injustice where you've got all sorts of revenue streams which should actually be - go to funding Traditional Owners, whether a fund might be established as an appropriate - a legislative appropriation that exists forever, like, for distribution by TOs themselves, so they have, instead of government picking little projects that it thinks annually are desirable and then of course gets either - usually reduced because the initial amount, you know, is a starting point, you put, as a matter of self-determination, into the hands of TOs a fund which is then administered by them for all the projects. Is that (a) possible and (b) discussed?

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THE HON. STEVE DIMOPOULOS: Yes, I think - and, Commissioner, I have to be careful not to step on another colleague's portfolio, and that's the Treasurer, effectively, and the Premier, but there is a self-determination fund and the leadership in terms of from Cabinet table on that is the Premier, the Treasurer and Minister Hutchins, the Minister for First Peoples. So I share - I share the agreement and the solution for - for the problem - the problems we discussed about funding, how it operates now. It's - more than that, it is probably a matter for broader whole of government discussion of which I will be a member of the Cabinet - I trust I will still be a member of the Cabinet in those discussions. So yes, I accept that, and I think there is an opportunity for that. It is already happening in some fashion.

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The other thing I just wanted to give a sense to the Commission. You know this, and again I don't mean to - when we develop a framework, it is normally a four or five-year document. It is not guaranteed, what I am about to say, but it normally follows that your budget bids as a portfolio minister do follow the kind of rhythm of the public-facing strategy that you've committed to. So for cultural fire strategy,

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that \$20 million runs over the four years, so at the very least in those constraints we still have a four-year funding cycle rather than annual funding cycle, for some important programs and enablers for Traditional Owners to reclaim ownership of land. That is not always yearly. There is - normally follow those strategic documents.

MS FITZGERALD: Minister, the Federation of Victorian Traditional Owner Corporations has proposed in a letter to Minister D'Ambrosio, which was sent in November 2020 towards the beginning of this reform process, that:

"Traditional Owner organisations should be able to manage - should be able to solely manage Country."

Do you anticipate that this would be possible under the new Act?

THE HON. STEVE DIMOPOULOS: I do. The new Act will give us more - sorry, I don't want to - it has to go through the Parliament of Victoria, and obviously there is a range of voices, particularly in the legislative counsel. But that - if what we - if our -

MS FITZGERALD: It is on the table.

THE HON. STEVE DIMOPOULOS: If what is on the table is enacted, these are exactly the opportunities we will have for Traditional Owners and us.

MS FITZGERALD: And what sort of other opportunities do you anticipate or are on the table that the new legislation might provide to Traditional Owners?

THE HON. STEVE DIMOPOULOS: So there will be an opportunity to classify in law, as to have an instrument in law to reserve land, public land, for cultural purposes. So at the moment it might be land for public education, or reserve or for racing, to be able to do that, or cultural purposes in terms of Traditional Owner cultural purposes. There is - on the table now is also to recognise in law in a statute a plan - a framework document, it could be the whole of country Care for Country document that Gunditjmara might put to us, that to be recognised in law as one of the framework - frameworks that govern that land and all that's done with it and that is important in terms of budgets and sort of the authority rather than just having the nomenclature of public land management is X, Great Ocean Road Parks Authority or Parks Victoria or DEECA, it could list the Care for Country Plan of Traditional Owners, and therefore gives it the status and authority it deserves. So culture reserves - sorry, Care for Country stewardship and documents and plans in law. It also gives the opportunity for - what is on the table now is for the - sole management in the sense that a Traditional Owner would lead - be able to lead parks manager or land manager, as I said earlier, in the order of Parks Victoria, to the highest hierarchy, still insufficient because it reports to the whitefella, you know, but effectively being - having that in law gives more clarity

and authority and it is - I think it's a fair pathway towards better self-determination outcomes, not the full pathway but better pathway.

5 **MS FITZGERALD:** Just turning to the original - one of the consultation papers from 2021, the paper Realising the Value of Victoria's Public Land. Are you aware of that paper, Minister?

THE HON. STEVE DIMOPOULOS: Is that in the material?

10 **MS FITZGERALD:** It is in the material that -

THE HON. STEVE DIMOPOULOS: Let's see how we go, Counsel, if you -

15 **MS FITZGERALD:** I will just refer to - I don't think I need the document. Commissioners, you should have that document before you, yes, which is BAL6.0002.0006.0009. And this was the consultation summary in respect of the public land reforms. The consultation paper at page 6 states that - at the very end of the paper, it states that:

20 "The renewal of Victoria's public land legislation will not..."

And then at the end of that, it indicates that it will:

25 "...not affect current tenures. These will be retained under current terms and conditions and future tenures will be issued under the new or modernised legislation."

Is that decision, conclusion, decision about scope, is that consistent with your understanding of what is on the table at the moment?

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THE HON. STEVE DIMOPOULOS: Yes.

35 **MS FITZGERALD:** And so the new legislation will not do anything to effect any currently held land tenures?

40 **THE HON. STEVE DIMOPOULOS:** I don't think that is an accurate reading of it, because tenure is here, and public land management instruments are here, and you have coupled them together. So this gives us the authority, or the tools in law to actually appoint a different group or a different authority as a public land manager, so then the tenure will sit with them. Do you see what I am saying? You need both - both aspects working together. I would say this actually goes some way to enabling tenure changes, subject to conversations between the government and the Traditional Owners, but also, you know, fundamentally public views and interested third parties, whether they be environmental groups that you listed
45 earlier or people who want access to public - to public - public land or Traditional Owner land. So this - I would see it in the other way. I would see this as the

enabler to be able to get to a position, a tenure conversation, because you have the instruments.

5 **MS FITZGERALD:** It would be fair to say, though, that it's not on the table for Traditional Owners to get freehold title to that land, is it?

THE HON. STEVE DIMOPOULOS: No. Not under the Public Land Act. I think that would be a broader discussion for whole of government.

10 **MS FITZGERALD:** Commissioners, I have taken you into the luncheon adjournment period, I have just been kindly reminded. I am sure - well, I am not sure - if there are further questions, should - would the Commissioners like to adjourn for a short break? Continue on? I am in your hands, Chair.

15 **COMMISSIONER NORTH:** Have you got further material to cover?

MS FITZGERALD: I am at the end of my questions, Commissioner.

20 **COMMISSIONER NORTH:** I don't have any further questions. Do you have questions?

CHAIR: Will we finish off, then?

25 **MS FITZGERALD:** Sorry, I missed that. I was having a discussion with my friend.

COMMISSIONER LOVETT: Just keep going until you're finished.

30 **MS FITZGERALD:** I am happy, if the Commissioners have any question on this issue of the reforms, what is on the table, what is not. I'll - I might hand over to you if there are any further questions.

35 **COMMISSIONER LOVETT:** Not related to that but more broadly. I have done quite a lot of roundtables. I have spoken to over 850 Traditional Owners throughout the course of this inquiry, holding roundtables and so forth right across the State. One of the things that has come up quite - well, at every conversation we've had is the amount of funding agreements that each Traditional Owner group has. Some of them have 50 different contracts just with DEECA alone. What is being done in the Department, because there have been commitments around
40 streamlining funding agreements to reduce the reporting burden on Traditional Owners? Again, some of these organisations don't have hundreds and hundreds of staff, so what is the department doing about reducing the administrative burden on Traditional Owners?

45 **THE HON. STEVE DIMOPOULOS:** Commissioner, I've heard the same from - nowhere near as many because I haven't had the pleasure, the privilege of having that level of contact with Traditional Owners. But the department right now is

working with Gunditjmara on exactly a new model of acquittal of application and acquittal of grants. I have always resented the bureaucracy around grants, even when I was on Monash Council. A whole range of these things have plagued community organisations, let alone Traditional Owners who have more rights in the hierarchy of public land. I think the work at the moment has already seen, in my understanding - I will come back to you at the end of the hearing with more detail, but the things that have been practised right now as a pilot is the acquittals being verbal in some respects and being not just necessarily filling out an entire 17 pages of how the grant was acquitted. There's other practices within - which are more sensitive and more respectful of Traditional Owner knowledge, so there is - one TO at the moment we're working with to revise how we do that. Because I never want to see a situation where you employ people just to be able to catch up with where government bureaucracy is. That would be the worst outcome. The best outcome is to do the - the work, Traditional Owner staff, with Traditional Owner Corporation staff, do the work of the Traditional Owner, not the work of the Government of Victoria. So I hear that and I will come back to you. But I am really working forward to seeing the work with DEECA is doing with the Gunditjmara because I want to actually try and apply that across the - across the frame of all our relationships and funding agreements with them.

COMMISSIONER LOVETT: Thank you. You have also got an Indigenous starter sovereignty policy you have developed.

THE HON. STEVE DIMOPOULOS: Yes.

COMMISSIONER LOVETT: Can you talk to us about and share insights about how that is going and what kind of data has been transferred over, given the Department is Country-related, TO Country-related. What are some of the initiatives what is some of the transfer of data that has been undertaken by the department?

THE HON. STEVE DIMOPOULOS: Thank you, Commissioner. I've got information that is worth relaying here. So there is - so there's it's going to - I am really conscious of talking about frameworks. The pathway - it's a pathway for indigenous data sovereignty policy. The pathway is a precursor to a policy. The pathway was adopted by the DEECA executive board in July last year; however, commencement of compensation has lagged which may delay early milestones. But notwithstanding these delays, there are already things we are doing right now. Sorry, integrated Indigenous data sovereignty into Aboriginal capability training, what I discussed earlier in terms of training. Granted, I wanted a follow up of how many people are doing the training.

Develop and update forms to gather and collect Indigenous data. For example, I think by the middle of this year, is my understanding, contracts that DEECA has with Traditional Owners, which effectively are based on generally on DPC contracts for how government works. IP always rests with the Government of Victoria. It won't always now. IP will rest with Traditional Owners where it

always belonged. So that is already - by the middle of this year, it will be in the template of contracts across DEECA and our third-party contractors. We are developing guides and tools to assist with the implementation of the pathway. So that's by 31 March - that's happened.

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Currently, we are conducting audit of Indigenous data currently held by DEECA that is due by 30 September this year. I am glad to put that on the record so you can hold us to account on those milestones. And systems must account for cultural information by 31 - as in our internal systems by 31 March 2025.

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An aspect of this too, which is sometimes not evident in - from looking at the pathway policy is just if you look at cultural fire, what Forest Fire Management Victoria are doing, we are actually now providing some of our internal systems to Traditional Owners so they have what they need to be able to determine whether they have cultural fire, so it is not just we'll have our systems and you do yours over there. So, sharing the systems developed by the bureaucracy over time.

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COMMISSIONER LOVETT: Just from a - the bureaucrat's point of view, what is being done by the Department to ensure the cultural safety of the Aboriginal workforce that do decide to take their talents to that department - your department? There is quite a cultural load on the Aboriginal self-determination reform, so I am not articulating the particular division. The Department has established a division. But what is put in place to ensure their cultural safety? Because a lot of burden has been put on them, as you have lightly touched upon. Yes, what is the Department doing about that?

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THE HON. STEVE DIMOPOULOS: Commissioner, what I first had a look at the - a few months ago at Pupangarli Marnmarnepu, the document that was developed effectively to guide DEECA's work, there was some statistics at the front of that - I can't bring them to mind if someone has them here - but where the amount of DEECA staff, First Nations staff, DEECA staff, who had experienced racism at their workplace was extraordinarily, uncomfortably high. That was 2020, off memory, and we were reviewing - that policy will be reviewed because the line to the framework of the Aboriginal Affairs - Joint Aboriginal Affairs Framework. So it will be reviewed and the next incarnation in 2025 - to be candid with you, I don't know what else other than the frameworks has been discussed has been done.

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But I do know - I mean this is by no way - I'm not appropriating the First People's experience, because it is like no other, but as a gay Greek guy growing up in Oakleigh in Melbourne, I have no tolerance, even if I didn't have a lived experience in terms of homophobia and racism, that I experienced when I was younger, even if I didn't have that, anyone with - with the values of human - accepted normal human values would not accept a safe - an unsafe space in any workplace. I don't accept it in DEECA and I have made it very clear in all my conversations with the executives, and I am sure my colleagues, Ministers, the other three Ministers that guide and govern DEECA would have done the same. I suppose I invite any First Nations - First People DEECA staff member to approach

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me in my office directly or Tom, the Executive Director of First Peoples. The training I talked about before I want to see it go from 20 staff, if that is what you tell me, Commissioner, I was not aware, to more.

5 We need a safe environment that is training, there is awareness, there is all the other work but I don't have the measure at the moment of what that looks like in terms of how a First Person feels in DEECA. I think they feel safe. They have my absolute permission to come to me if they don't.

10 **COMMISSIONER LOVETT:** Look, I don't know if you've done this or not, but it's probably a bit confronting for the staff to be able to get access to you as the minister, but I would assume, though, that it would be probably advantageous for you to be able to make contact with the likes of Tom to be able to go and meet with the Aboriginal staff director to hear their lived experience working in the department from a leadership perspective. It would be important for you to show that.

THE HON. STEVE DIMOPOULOS: It would be a pleasure and a privilege.

20 **COMMISSIONER LOVETT:** One other thing, sorry.

MS FITZGERALD: Commissioner, I should say, there is of course no reason - I think there is no reason why if the Commissioners wanted to consider whether there were any further questions why we couldn't return for a short period after lunch, but there's also no reason not to continue now - I will float that.

COMMISSIONER LOVETT: I have one more very important one, not last but not least. I talked a little bit about recruitment and retention practices in the department. And yes, the Department what we have seen from the evidence that we have been able to read prior to coming in today, that there is been some active recruitment, particularly in moving staff into executive positions that have been there before, but it would be really good to have a more, I guess, deeper analysis around the investment that's gone into those staff, and in particular Aboriginal women as well, and making sure that Aboriginal women cannot only survive working in the Department but also thrive and be able to move through the ranks to make it to executive ranks, and the different barriers that Aboriginal women face as well as Aboriginal people more broadly.

THE HON. STEVE DIMOPOULOS: Thank you, Commissioner. I take those insights and suggestions very seriously, and they will be informing my conversations with the Secretary and the relevant Deputy Secretaries that I work with.

COMMISSIONER LOVETT: To see them in your performance plans as well. Anything further you'd like to say before we finish up?

5 **THE HON. STEVE DIMOPOULOS:** I just want to say it's been an absolute privilege to share this time. I understand the gravity of the work of the Commission, and I wish it extraordinary success, and I look forward to being at the Cabinet table in future deliberations in responding in a fulsome way in future to the Commission's reports.

10 **MS FITZGERALD:** What time shall we return from lunch if we were to - if it is an appropriate time to adjourn now? I understand my learned friend, Mr Goodwin, will be assisting the Commission this afternoon. And so would 2.10 be an appropriate time to return from lunch, or 2 o'clock? Hard working.

CHAIR: 2 o'clock.

15 **MS FITZGERALD:** Thank you, Chair, we will adjourn until 2 o'clock.

<THE HEARING ADJOURNED AT 1.20 PM

<THE HEARING RESUMED AT 2.11 PM

20 **CHAIR:** This sitting of the Yoorrook Justice Commission has now resumed. Thank you, Counsel.

25 **MR GOODWIN:** Thank you, Chair. Good afternoon, Commissioners. We now have a panel of staff, First Nations Legal and Research Services which I will refer you to in the course of my questions as First Nations Legal who will give evidence before the Commission. So if the Commission pleases, I now call Tony Kelly, Rainer Mathews and Will Crawford of the First Nations Legal and Research Services to give evidence. So first, if I could have you introduce yourself and your role.

30 **MR KELLY:** I am Tony Kelly, the CEO of First Nations Legal Services. I have worked there for 14 years started as a lawyer in 2010 and I have been the CEO for the last six years.

35 **MR GOODWIN:** Thank you. And Rainer?

40 **MR MATHEWS:** Hi. I am Rainer Mathews. I am the Principal Legal Officer at First Nations Legal and Research Services. I have been the Principal Legal Officer since 2022, started working in the organisation in 2019, but have been working in Native Title since 2006. Started in the Pilbara, then worked as a Native Title consultant and worked in different parts of Australia and have that long history of working with Native Title.

45 **MR GOODWIN:** And Will?

MR CRAWFORD: Commissioners, my name is William Crawford. I'm a senior lawyer with First Nations Legal and Research Services. I have been with First

Nations Legal for one year, previously worked with Northern Land Council in Darwin and also the Arnhem Land Progress Aboriginal Corporation. I would also like to acknowledge that we have received some assistance and pro bono support from Herbert Smith Freehills who conducted some significant research and drafting assistance with our two technical papers. So I had just like to acknowledge their contribution to our submission.

5
10 **MR GOODWIN:** And so, Tony, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

MR KELLY: I do.

15 **MR GOODWIN:** And, Rainer, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

MR MATHEWS: Yes, I do.

20 **MR GOODWIN:** And, Will, do you undertake to provide truthful evidence to the Yoorrook Justice Commission today?

MR CRAWFORD: Yes, I do.

25 **MR GOODWIN:** Tony, I understand you would like to commence the evidence to the panel with an Acknowledgement of Country.

30 **MR KELLY:** Yes. Thank you, Tim. I would like to acknowledge the lands of the Wurundjeri Woi Wurrung that we are on today. I'd like to acknowledge Country for all of the people in Victoria for who FNLRs has worked with over many years. I'd like to acknowledge Elders past, present and emerging. I'd also like to acknowledge this Commission, the fantastic work the Commission is doing and has been doing, and the opportunity that you have provided us to come and meet with you and give evidence today.

35 **MR GOODWIN:** Thank you. Tony, could you please briefly explain the history and role of First Nations Legal?

40 **MR KELLY:** First Nations Legal is a Native Title service provider under the Native Title Act. We - our statutory role is to provide Native Title assistance to Victorian Traditional Owner groups. We are funded through the Commonwealth to do that work, and we have been doing that work for 21 years. Prior to us there was another organisation called Mirimbiak Nations Aboriginal Corporation who also did that work. So we have built on the work that Mirimbiak has done and built on the work that previous colleagues, CEOs and board members, and Uncle Graham Atkinson, who I know who some of you met with yesterday, was a previous chair of the organisation. We have got a great legacy to build on of
45 people who had done extraordinary work in this area.

We have also - we have also received funding through the State Government, the Department of Premier and Cabinet to focus our work on those areas where there is not yet formal recognition. And that extra funding has helped us engage with those communities on a deeper level, get those communities - give those
 5 communities the opportunities to understand the research that is been collected about them and also share their own understandings of their research and then make decisions about what formal pathway they wish to pursue under either the Native Title Act, the Traditional Owner Settlement Act, the Aboriginal Heritage Act, and now the Treaty process through locally based Traditional Owner treaties.
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MR GOODWIN: You mentioned the Aboriginal Heritage Act. Does your organisation have any responsibilities or dealing with matters arising under the Aboriginal Heritage Act?

MR KELLY: No we don't, Tim. We - the only time we get involved is if a group we are supporting through a Native Title journey wish to make an application under the Heritage Act to become a Registered Aboriginal Party. But we would only do that if that group would be capable of achieving a Native Title outcome.

MR GOODWIN: I note -

MR KELLY: If they're capable of achieving a Native Title outcome. So because there are different thresholds for recognition under the Aboriginal Heritage Act, we wouldn't want to support an application that - for a group that wouldn't be able
 25 to either get a determination of Native Title or enter into an Indigenous Land Use Agreement.

MR GOODWIN: Of course. I know this is a big question, but, Tony, given you have been at the organisation since 2010, have there been any major changes in the nature or the activities of the organisation over that time?
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MR KELLY: Well, when I joined, it was actually the same year that the Settlement Act had been enacted, so groups were actively pursuing settlements through that. And at the time they were considered to be an alternative to Native
 35 Title, so groups would choose to enter into a settlement agreement and then withdraw their Native Title claim or not lodge one in the first place. So there was a strong pivot to Settlement Act proceedings. Over the course of perhaps more recent years there has been a pivot back to groups pursuing Native Title at the same time as settlements under the Settlement Act. They are probably the two
 40 major changes I can point to.

MR GOODWIN: Sorry.

MR KELLY: There is probably another change which is again more recent, where initially First Nations Legal was really the only lawyer that people could
 45 access to pursue Native Title more or less in Victoria. They would come to us, we would be your lawyers. But more recently we have recognised that groups through

the exercise of their self-determination want to get representation elsewhere, or because we have a legal conflict in the matter, or our relationship through legacy issues may not be a positive relationship with the group and they chose to get alternative representation. We will, to the extent we can, facilitate funding for those groups to be able to get their representational alternatively. So that's been a change.

MR GOODWIN: And we will explore some of those changes particularly around the introduction of the Traditional Owner Settlement Act shortly. But first I want to ask some questions about Native Title as a legal framework in the State of Victoria. So First Nations Legal has provided a submission to the Commission's inquiry into land, water and sky. The submission broadly covers three issues: first the story of Native Title in Victoria and your organisation's role in it; second, the relevance of the legal principles espoused in the United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP as it is commonly referred to, to Native Title and, more broadly, land justice in Victoria; and then third, the issues regarding the implementation of UNDRIP in Victoria.

Before we discuss that submission, thinking about Native Title as a legal framework, as the Native Title representative body you represent most Native Title claimants in Victoria making claims under the Native Title Act. The Commission has heard extensive evidence from First Nations and non-First Nations historians and anthropologists about the rapid and, in many ways, uncontrolled and uncontrollable expansion of colonisation in Victoria in the mid-19th century. What impact do you consider this has had on the capacity of Victorian Traditional Owners to establish Native Title?

MR KELLY: It's been significant. I think that rapid expansion and dispossession has left great legacies of trauma for groups. It's also led to patches in the evidence about who is connected to where and about the ongoing connection to Country through the generations. It's led to people losing confidence at times in their ability to be able to pursue a Native Title outcome. So we - so that - which has meant then a lot of work has to be done.

We do a lot of work with researchers to help groups understand their connection and rebuild the picture, create the - tell the story of their connection to Country through research and it is the legacy of that the settler impact has meant that people are often in conflict with each other about whose Country is whose, or which families belong, where the boundaries are, and there is very inaccurate, conflicted and contradictory records that just fuel into the disputes. So that trauma, combined with the incomplete picture, difficulty in bringing a complete picture together, means that the journey is a lot harder for people.

MR GOODWIN: A number of commentators, including some in this room, have referred to the operation of Native Title law to effect a double dispossession for those with the longest contact with colonisation. Do any of you agree or disagree with that statement, and if so, why?

MR MATHEWS: This is sort of an answer to your question, but I'd like to go right back to the start of Native Title and the Mabo decision. Politicians at the time were thinking about 'how do we address Native Title'. And it was the Keating
5 Government and the Keating Government put through the Native Title Act. And at the same time as they were having that discussion the Native Title Act was going to be a part of a three-tiered response to Mabo, and the first was the Native Title Act. The second was the Indigenous Land Fund. And then the third was supposed to be the social justice package. And the social justice package was supposed to
10 address Mabo and address Native Title in a more holistic way and address - provide some answers to the people who were not going to get a lot of benefit out of the Native Title Act. And that never came into being. There was the Keating Government and then the Howard Government and the Howard Government didn't progress that social justice package.

15 You know, you look at the arc of history and I think it is right now with this Truth and Justice Commission and the Treaty framework that in Victoria where first - for the first time we are getting that kind of holistic look at Indigenous dispossession in Victoria, of First Nations dispossession in Victoria, and that is
20 what has been missing in - over all of these years and it is particularly affecting in Victoria, I think, and it is been a particular struggle in Victoria for groups to get recognition, and that's that legacy of 200 years of colonisation, it's the - all of the stuff that's been put - put before this Commission over recent days of the massacres, the taking the children away, all of that has made it so hard. And then
25 there's been that lack of holistic - a lack of a holistic - there's a lack of holistic address - addressing of the issues at hand. And so, yeah, sorry, slightly - there is a slight tangent to the question that you put, but -

MR GOODWIN: No, no, no, thank you. If I can put some data that we know that
30 has come through evidence before the Commission, within 10 years of the settlement of the State of Victoria, nearly 4 million acres of land had been sold by 1860, 10 million acres were opened up for sale in 1862, and the 1884 Land Act made - divided unalienated land up across the colony and made it available for selection and purchase. Having said that, today, 40 per cent of Victoria remains
35 Crown land. However, a significant proportion of that land is freehold. What impact does that have on the capacity to establish Native Title as well as the land available for Native Title?

MR MATHEWS: Well, Native Title is a weak form of title in the sense that any
40 inconsistent right to land that's been created in the intervening period will extinguish it, and so within the frame of the Native Title Act, all of those land releases in the 1800s will have extinguished any right to Native Title in - in those areas, and that - that includes a lot of land that is now Crown land but would have had an inconsistent title granted over it at some time in the past. And so, yes, that
45 is a big barrier to recognition of Native Title rights in Victoria.

MR GOODWIN: I might bring up a slide from the presentation delivered by Dr Bill Pascoe at page 16. His evidence was focused on massacre mapping, but he had a slide regarding trade routes throughout the Eastern Seaboard. And you can say that - see that there is a number of concentrated trade routes that he has

5 mapped in Victoria, and from the arbitrary boundary of New South Wales and Victoria down into Victoria as well from New South Wales. The Commissioners have heard and - evidence about the significant relationships between First Nations Victoria including in terms of trade routes, traditional marriage, creation stories, the travel of song lines across the state.

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I just wanted to see if any of you had any reflections on the fact of that concentration of trade and relationships between Victorian First Nations, given the fertility of the land, is intention with Native Title laws requirement to identify with certainty societies with particular ownership of Country?

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MR KELLY: It certainly makes it much harder, because it is - one of the great difficulties we have in our work is defining boundaries. I mean, I believe - and boundaries in a Western sense were not relevant in the classical traditional sense. To ask groups not only when there a scant evidentiary record, but then to say, well, with that you have to define a boundary of your Country, it just fuels those disputes that we talked about earlier, particularly if you add that where the fertile land was, where those trade routes were, is where the first settlers pushed Aboriginal people off in the first instance. So they are the ones most dispossessed, and they are the ones who then have to pursue through a legal framework that

20 asked them - the people who dispossessed them are now asking them to go through these hoops to demonstrate that they've still got connection to Country, and then to define themselves in terms of an area with a boundary that really wouldn't have sat culturally when that Country was not being - when they weren't being forced off their Country. So there is just this incredible mix of complication that adds to the difficulty and the trauma of the work we do. I mean, we are

25 working with people who have experienced ongoing trauma. The process that we are working within creates more trauma. That is something that we contend with day to day with our work. You know, we try to adopt practices that minimise the trauma, but it's inevitable for us -

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MR GOODWIN: Can you just share some of those - like, those practices?

MR KELLY: Yeah. So it's - it's through ensuring where we can that people are given access to the same material that we've got. So we're not just standing here as

40 the expert with facts and figures. It is actually using - giving material to groups to be able to interrogate and understand and challenge. It is also, when we run meetings, we ensure where possible, not always possible, we have facilitators who are First Nations people, facilitators from the group. It is not, again, the external person come in and running the meetings. It's recognising increasingly that it is

45 their choices that they need to make, what they want to do. It is not what we think is best for them.

MR GOODWIN: Just a final question, then, on the legal framework of Native Title. Given all we have discussed just now, do you think Native Title is fit for purpose in terms of delivering land justice for Victorian Traditional Owners?

5 **MR KELLY:** I will have a first crack at this. I don't think it is fit for purpose, but I believe it can achieve a purpose. And that is by - where groups can have - have done the work with our support or support from elsewhere, to get the barest recognition possible, that is - not the barest recognition, but the barest rights that the recognition affords, then build on those to then pursue other rights, whether
10 that is through the Settlement Act or now through treaties. I see it as not fit for purpose, but I believe it can achieve a positive purpose. And when - when we can work with groups to get enough evidence, resolve those disputes and bring in a competent claim before the court.

15 **MR GOODWIN:** So then turning to the story of Native Title in Victoria and the changing attitudes of the State towards it, the submission provided by First Nations Legal states that the State's initial approach was active contestation of Native Title. Can someone briefly explain how that active contestation played out in Victoria?

20 **MR MATHEWS:** I think - and tying it back to your previous question as well, I think there's alternative ways that Native Title could have progressed in Victoria. And when you are looking at that severe history of dispossession and colonisation, and - and the problem with how you deal with that in Native Title, the - the
25 questions that come up in Native Title claims in Victoria about boundaries, about group membership, they are the same questions that come up in every other Native Title claim across Australia. It is the same questions that I was looking at in the Pilbara when I was working as a Native Title lawyer in the Pilbara. And we - we know that those questions can be dealt with efficiently and sensitively by the court
30 through the Native Title system in some - in some context. And the policy settings in Victoria were such in the 90s that that kind of opportunity was missed, and because the State contested the Yorta Yorta claim and actively contested it, it's really - it's really been a - it's really hampered the progress of Native Title in Victoria from that time on. And everything that has happened since then has been
35 shaped by that experience with - with the Yorta Yorta claim. So I lost my train of thought.

MR GOODWIN: Well, I might bring up, just in terms on Yorta Yorta, if we go to page 3 of the primary submission by First Nations Legal, so the submission talks
40 about the fact that the active contestation really culminated in the High Court's decision in Yorta Yorta which found that to prove connection to Country under the Native Title Act, a group had to establish that observance and acknowledgment of traditional laws and customs must have continued substantially uninterrupted since British sovereignty. Page 3 of the submission in the - under the heading - under
45 the point 2 heading 'The 1990s', in the second paragraph, starting:

"Through the 1990s".

MR MATHEWS: Yes.

5 **MR GOODWIN:** It said - First Nations Legal has stated:

"The Yorta Yorta High Court decision experience was traumatic for the Yorta Yorta people involved, casts a long shadow, and is fixed in the collective memory of the many Traditional Owners from across the State".

10

So what in each of your experiences has been the lasting impact of the decision on Victorian Traditional Owners?

15 **MR KELLY:** In my experience, it's been that self-doubt that is created. How are we going to be able to prove our continuous connection, if we have to contest it in court, if there is a - if there is a respondent - a hostile respondent? It's - it's also - it's - it's left a legacy of trauma around the fact that - it's the fact that dispossession happened - sorry, that we're having to prove something that the State has taken away from us, the fact that it's taken us away the ability to practice culture over the
20 generations, now we have to go back and prove to that State that we still do it despite everything you have done.

So when - at times when I have been at meetings with groups who have neighboured the Yorta Yorta that is something that they - it's fear - it creates a lack
25 of confidence at times but they have overcome it, but it is also fuelled anger, a lot of anger about that and therefore distrust in the State. "You did this to us - you have been doing this to us for generations, now you have given up - you've attacked us in this legal process." Okay, the State has changed, there was a big change with the Labor Government following the Kennett era, but memories are
30 long for people, so they are not always trusting that if a State officer comes and says, "Things are different now, we are going to do it differently, we are with you." Yes, that is good, but it is not always trusted at first - at first instance.

35 **MR GOODWIN:** And the submission highlights that tension between the State as a model litigant in the language of the law, being required to test on behalf of the citizens of the State, claims to Native Title. But at the same time, I think in the words of the submission being, "The architect of the dispossession and disruption to Aboriginal society." And having to hold that space in negotiations with Native Title claimant groups. How does that tension play out in a practical way? I mean,
40 Tony, you have highlighted that sense of anger and distrust. Are there any other ways in which it practically plays out in negotiations?

45 **MR KELLY:** I think it comes back to that point of people are nervous about whether their evidence is going to stack up. So there is a sense that your bargaining position is weak so that when an offer is made, "Take this or we will see you in court." People - groups may be more inclined to take the offer without

pushing harder for what they potentially could be entitled to. So I think it undermines their negotiating position.

MR GOODWIN: Yes, Rainer. Go ahead.

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MR MATHEWS: I have another point there. The way that that Native Title has progressed up until this time is - it's been very compartmentalised, very siloed and separated out from the rest of the issues that First Peoples need to address. And I can't see a starker example of that than in the human rights and equal opportunities Bring Them Home - the mission - Bring Them Home report in 1997 about The Stolen Generation.

10

Looking at that alongside the decision of Justice - in the first instance decision of Olney J in Yorta Yorta in 1998, they are talking to a large extent about the same people, the same set of historical circumstances. And yet in the Yorta Yorta determination, there is no looking at that kind of holistic perspective. And it's really stark. I find it quite shocking when I go back and read those two documents side by side, because it's the same time. It's - it's directed to the same issues but, you know, the one is not referencing the other.

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And again, you know, come back to we are here today in this Commission and this is the right way of doing things, coming and looking with that holistic perspective, getting everyone to - giving people the opportunity to speak about what is - how they are affected by colonisation. And so I think it's - that's a really stark example of it, that original Yorta Yorta decision and the Bringing Them Home Report and then that disjuncture, that - you know, the compartmentalisation has continued through, really, until now, and I think -

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COMMISSIONER WALTER: Do you think - and it's because it is - because Native Title is about land and about wealth, is that why you think there is that disjuncture or if you can feel sorry for First - for The Stolen Generations?

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MR MATHEWS: It is just a sort of lack of - there's - there's so much to unpack. There is such big stories and the story of colonisation is such a big story and it is, like, the State's grappled to unpack it and find a way to do that, and Native Title was an attempt, but, you know - and there is a lot of great stuff that has come out of Native Title, but I've been in Native Title for 18 years, I think there is a lot of value in Native Title. But really, Native Title is just a partial answer to the problem.

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MR GOODWIN: So the submission of First Nations Legal then tracks the history of Native Title into the 2000s where the State took a more conciliatory approach to Native Title claims. And three consent determinations followed between 2005 and 2010, the first being with the Wotjobaluk, Jardwawa, Jardwajarli, Wergaia and Japagulk peoples. I don't want to re-prosecute each of those consent determinations, but how would you describe the process for those consent determinations and in particular the length of time it took?

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MR KELLY: None of us was directly involved in those matters, this is probably an observation at distance, really. So the State that is more willing to consent - so we had a change in attitude from the State. But I think it is important to note with

5 the first one which was a paradigm shift in Southern Australia with the Wotjobaluk nation's consent determination that Native Title as achievable in Southern Australia. That was huge. A huge congratulations to the Wotjobaluk nations. But noting that not much Native Title was recognised. It was, you know, some riverbeds and a few Crown land parcels. So there is - a lot of extinguishment

10 was at play, so, yes, it was significant step forward, but there wasn't a lot of recognition. But that - but it did set - it set the - the stage then for the next consent determinations to follow which were able to within again, the State not having being quite - so yes, the State were open to consenting to Native Title but they would have fought the tenure issues all the way, so extinguishment there,

15 extinguishment here, all the way, with others I am speculating here, they are prepared to die in a ditch over each parcel and they are prepared to recognise that Native Title hasn't been extinguished over such swathes of Country. And so you will find in those two determinations greater areas of Crown land recognised than you do first - with the Wotjobaluk nations.

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MR GOODWIN: And is that part of the burden of being the first group? And what can we learn from that? I am thinking about the Treaty process in particular. Are there any reflections we can learn from that burden of being the first?

25 **MR KELLY:** One of the - certainly under the Settlement Act that I know we will talk about later, there has always been this policy from the State that even if you go first, if a group that follows is able to negotiate better terms in their settlement, there will be a retrospective improvement in the terms of your initial settlement. So it is not a - there is no risk to the group for going first. I can't speak for what

30 happened with the Native Title process, to the extent that there was any sense that, yes, if another group did better, there is an opportunity to go back. I believe the Treaty process is one forum for groups such as the Yorta Yorta for example.

I mean, I do want to be honest, despite the outcome of that the court case, the

35 Yorta Yorta never ceded their Country, nor - you know, they are strong in the practice of their culture, despite the outcome of that case. You might find with the Wotjobaluk nations, despite the recognition of small parts of country of Native Title, they are strong on their Country. So the Treaty process is an opportunity, I believe, for dealing with the issues because they went first, they perhaps didn't

40 benefit so well.

MR GOODWIN: So returning back to the chronological story legislative change that occurred following Victorian Traditional Owner demands for land justice was the introduction of the Traditional Owner Settlement Act. Could someone tells us

45 briefly about the background to the introduction of the Act?

MR KELLY: This is when I started in 2010 following the work of the State Government and the Traditional Owner Land Justice Group, which was a collection of Traditional Owners who came together to work with the State to develop the settlement framework. And that framework was the framework from
5 which the Settlement Act itself was drawn, and it was very much set the scene then for all the suite of agreements that are available under the Settlement Act. It was a recognition that - there was a belief by both the State and, I believe, the Traditional Owners at the time it is better to negotiate outcomes rather than to litigate outcomes. From the State's side, it was their view if we are more generous
10 in the benefits that are achievable under the Settlement Act than what is achievable under the Native Title Act, then groups would not pursue a Native Title claim therefore we don't have to go through the expensive process of litigation or the expensive process of land tenure to identify what parcels of land Native Title has been extinguished, nor do we have to put groups to the test about their
15 continuity. So it's recognising the trauma of the Yorta Yorta case and going, "We don't need to put groups - all we need to do to satisfy it is we have the - Right People for Country."

Then if they can show they are able to manage the benefits of an agreement, then
20 we will enter into an agreement with that group. So that's - that's what I understand is the premise for why. In the State - the State had a business interest, a business case, so to speak, it would be cheaper, the money spent on litigation on land tenure would be put towards put towards settlement. That's how it was put to me. From the Traditional Owners' point of view, you would get rights and interests, again
25 still very weak, but rights and interests over Crown land irrespective of whether Native Title has been extinguished over that Crown land, so it has a broader purvey. And then there were these other agreements such as the joint management of national parks and also the financial elements, the compensation - the so-called compensation payments that were available to groups through the Settlement Act
30 that aren't available to groups through the Native Title process unless they pursue a separate compensation claim.

CHAIR: Can I just clarify, Tony, is Right People for Country still operating?

35 **MR KELLY:** No, Commissioner, it's not. Thank you for reminding me, because I made a note to talk about it. At the time of the Settlement Act package, there was a recognition there would still be dispute about boundaries and about who is or who isn't within groups. So the State set up a Right People for Country program which was to - Indigenous-led dispute resolution process where, ideally, Indigenous
40 facilitators and non-Indigenous facilitators working together with groups on their instructions to find resolution of disputes. And once those disputes had been resolved, then we go back to the State and say, "We are ready now, we have got our boundaries sorted, we have the group composition issue sorted, we will do a deal." That was through the, I guess, the promise of that program. It delivered to a
45 certain extent. But then it failed to deliver the full reach it was set out to achieve.

MR GOODWIN: I think the funding for that program, based on evidence before the Commission, ended in 2022, if I am right, or around then? What type of statutory rights and interests might be negotiated under the Traditional Owner Settlement Act?

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MR MATHEWS: So one of the cornerstones of the Traditional Owner Settlement Act are the conferral of Traditional Owner rights, so they are akin or equivalent to Native Title rights. But when Native Title rights are rights that exist under traditional law and custom and recognised through the common law and the Native Title Act that conferred - rights that are conferred by statute by the Traditional Owner Settlement Act. So their rights to hunt, camp, access land and that sort of thing, that a big benefit under the Traditional Owner Settlement Act is that those rights apply to all Crown land in the settlement area, whereas the Native Title rights will just apply to Native Title is recognised, where it hasn't been extinguished.

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So that is a substantial benefit of that regime compared to the Native Title regime. Other rights that are recognised are the joint management of parks and reserves and then funding for both joint management arrangements and for ranger programs and that kind of stuff. There is a recognition statement which is prepared by the Traditional Owner group which - I think is what is it's called - under the framework. And that recognition statement is a significant statement of recognition by the State of the group's traditional ownership. There are financial benefits then there are a range of other rights, there is a Local Government strategy. There is the ability to confer freehold land, ownership of freehold land to the group.

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MR GOODWIN: Just to pause on that issue in terms of the granting of freehold title. I mean, that is the strongest form of title in Western law, at least. Has that occurred much under the Traditional Owner Settlement Act for Traditional Owner groups?

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MR MATHEWS: There's small areas of land that have been passed over under that - within that framework.

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MR KELLY: Often, Tim, some of the land that is offered with the transfer, it's not land that is necessarily useful, and then with ownership there comes cost of maintaining the land, so yes, sometimes there has been transfer but other times what is on offer as well. You are only offering this because was not useful for the State. So it is not always as good as what it can appear.

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MR GOODWIN: And since the passage of the Traditional Owner Settlement Act, there have only been four recognition and settlement agreements negotiated and finalised, and only two with groups that did not secure a Native Title determination. Would you describe that as appropriate or acceptable?

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MR KELLY: I would describe it as disappointing there are not more settlements, because I think the promise was there was going to be settlements and they will be quicker than the Native Title process. But I think in the context of the difficulty of what we talked about before, groups coming together and resolving issues and

5 disputes that have been very much a legacy of the dispossession made reaching an agreement very difficult. And under the Traditional Owner Settlement Act, there is no determinative arbitral decision-making process if there is a dispute. We had the Right People program that did its best to try and resolve disputes. There was no ultimate point of, well, this dispute has gone on so long, we need to - we actually

10 need to put it to rest. That then allows groups who might be 99 per cent there, but there is just for whatever different reason, and some people saying, "I am not happy with this" or "I believe I should belong where you said I don't" or "I don't think these other people belong" or "the boundaries aren't what I think they should be", you get - stall. The State is reluctant to make - reach an agreement with a

15 group where there are still outstanding disputes. So that's really been one of the major issues with reaching settlement.

And also there have been times where the group has gone, "You know what, this sounds all good on paper. We are not entirely happy with this, we don't want to

20 sign off full and final settlement. No, we are not going to accept this outcome." It is not entirely to do with dispute. It's also to do with groups saying, "No, this is not for us."

MR GOODWIN: It seems to be the same both in the Native Title context and the

25 Traditional Owner Settlement Act context that the very consequences of the rapid and extensive colonisation in Victoria leading to dispossession and disruption is the very reason why or the strong barrier to land justice outcomes within the legal frameworks that exist. Just if you wanted to react to that comment.

30 **MR KELLY:** Can you actually make that comment again, please, Tim.

MR GOODWIN: There seems to be a constant theme that the very - that the intense nature of the dispossession and disruption to Victorian Traditional Owner societies is the barrier to achieving land justice under existing legal frameworks

35 when those existing legal frameworks are supposed to deliver land justice for the very groups that are the most heavily affected. There seems to be a tension there.

MR MATHEWS: Great irony of the Native Title framework that the more dispossession you have, then the less availability there is of a remedy. So the

40 worst the colonisation has been, the less able you are to have your rights recognised and the less able you are to have some other kind of remedy like compensation. It is sort of - it is the reverse of many other areas of the law where the - the more harm you've suffered the greater the remedy is that you can get through the legal system. So, yeah, it is the great irony of Native Title and sort of a

45 great policy failing. Going - what I said right at the start, going back to 1993, there was anticipation there would be the social justice package that would sit beside the Native Title Act to address that.

COMMISSIONER LOVETT: The more this goes on I reflect on Counsel's question particularly about Native Title being fit for purpose here in Victoria. I want to give you the further information to say if you agree or disagree with that. I
5 think I want to come back, we heard further evidence, you have articulated very strong sentiments about that, but then not really come out and said that.

CHAIR: Can I ask another question.

10 **COMMISSIONER LOVETT:** Can we answer this one first?

MR MATHEWS: It is not fit for purpose.

CHAIR: My question is, given it's been 20 years of Native Title determinations,
15 we have had a very recent one just in the last year or so, are there differences between those early pieces and what has been achieved in the latest one? Are there other differences of substance?

MR MATHEWS: I think there has been. There is more willingness from the
20 State to recognise.

CHAIR: I understand it's not fully completed, but it is public knowledge that 80 per cent of the claim went ahead.

25 **MR MATHEWS:** Yes. If you compare, say, the Eastern Maar determination to the - which is the most recent one, to the Wotjobaluk nation's determination in 2005, there's a lot more Native Title recognised in the - the Native Title is recognised over a much larger area than was recognised in 2005, and you can -
30 you can see the progression of the policy settings of the State being more amenable over time to recognise Native Title.

And going back to Yorta Yorta, the State was contesting it. Then in 2005 they were recognising it but only over a very small area of land. Now, it progressed to where we are at the moment and the State is more willing to recognise Native Title
35 over a larger area of land and with a lower evidentiary threshold as well.

COMMISSIONER HUNTER: Did they contest that one the Chair was talking about, the State? No, the most recent one?

40 **MR MATHEWS:** So that's been a - that is a consent determination.

COMMISSIONER HUNTER: Okay.

MR MATHEWS: A negotiated settlement under the Native Title Act.
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COMMISSIONER HUNTER: Really I just wanted to pick up a point you said earlier about the Bringing Them Home Report and how the taking of the children

and just the removal of people off Country and then you come to this Act where you have to prove, you know - and you have just been removed and you can't find where you are from or it's been - you are put into missions to not practice your culture and your laws, and yet you have these laws and policies that don't even
 5 take that into account, from the people that did this to you. And I struggle with that, I really - really - and I see the trauma that you spoke about, particularly and a lot of people have spoken about Yorta Yorta here, and I will use that as an example, the pain and suffering from the people that actually made it through to the other end and people that didn't make it through as well. So not only is - the
 10 legacy of the state of pain and trauma - it continues to inflict that through this law. Would you agree?

MR KELLY: As Rainer pointed out, that is a great irony. And it is unjust that people are taken away, denied their culture, yet they have to prove they still have
 15 culture. Very bare rights that are available to them under the Native Title Act. Now, that would be why there was this issue of a Settlement Act alternative. Because it was offering more but without having to go through the same - you still had to go through some rigour, but not the same sort of rigour around the connection to Country.

20 So I saw it as - and I still do, I see it as a beneficial piece of legislation, not without its problems, but that it didn't ask people to demonstrate the continuous connection over the generations. All we had to do is just establish you were those right people, you were the right people for that Country, and then you could go
 25 through that process of negotiating.

COMMISSIONER LOVETT: Part of our mandate is to establish the public record and document the injustices. Today you have talked about the State playing an active role in the negative determination of the Yorta Yorta. What are some of
 30 the actions, what are some of the things that you can articulate what they did during that - in the lead-up to it?

MR MATHEWS: I wanted to pick up on - this answers - a partial answer to the question is what the Human Rights Commission found in relation to The Stolen
 35 Generations was that the policies that led to children being removed were intentionally designed to - and this is the words they used, "eliminate Indigenous cultures as distinct entities." And they found that the:

40 "The predominant aim of Indigenous child removal was the absorption of the children into the wider non-Indigenous community so that their unique cultural values and ethnic identities would disappear".

And that was the finding of the Human Rights Commission at the time that the State was contesting the Yorta Yorta claim and saying that because - because there
 45 was that lack of continuity and because there was that loss of culture, we don't want to recognise that you have Native Title rights and we don't want to recognise

that you have a right to compensation, so it - I find it hard to reconcile those two positions.

5 **COMMISSIONER LOVETT:** So the Bringing Them Home Report is one component to - surely the State - or was the State doing other things beyond the report and what we have heard in that Bringing Them Home Report, to pick up on your report about actively, what other activities was the State doing to oppose the determination - sorry, to oppose the process that Yorta Yorta people were undertaking? And that doesn't have to just be yourself but to anyone to articulate.

10 **MR KELLY:** There would have been instructions to the barristers to cross-examine heavily the Aboriginal witnesses and to discredit their evidence, and then there was also the preference of white records, white squatters and I guess first colonisers over the oral tradition of the Yorta Yorta, so giving that more weight and focusing on that.

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COMMISSIONER LOVETT: Anything further beyond that? Thanks for that. Is there anything else people want to contribute?

20 **MR MATHEWS:** The Yorta Yorta peoples and I am just going off the record of what is in - what is in the case, the Yorta Yorta people's position was that, "We are the Yorta Yorta people. That is how we identify and this is our Country." Whereas the State's position was, "No, we don't recognise that, we've interrogated the historical record, and from the historical record we conclude that you are not the

25 Yorta Yorta people, that you're, you know, these other groups of people that were recorded in Kerr and Robinson and other people who - other white non-Indigenous people who were around at that time and who recorded information."

30 And so if you are looking at it from a self-determination lens, the State was saying, "No, not at this time. We don't want to recognise you in the way you want to be recognised, but we prefer what was put in the historic record by these people who didn't have a lot of insight into what your culture was, but who happened to record it at the time."

35 **COMMISSIONER WALTER:** But aren't the Yorta Yorta a Registered Aboriginal Party now? Aren't those two positions contradictory?

40 **MR KELLY:** Yes, because the Native Title claim was pursued before the Aboriginal Heritage Act was available and under a different government at the time. It was a conservative government that contested it. And then the Aboriginal Heritage Act was probably the first legislative instrument that came in after the change of approach on the State Government, we said we do need to that adopt a better approach to recognition and rights.

45 **MR GOODWIN:** And just for everyone's benefit, one of the first witnesses to give evidence before the Commission was Uncle Colin Walker, who gave evidence in the Yorta Yorta trial and gave evidence before the Commission about

the intense cross-examination that he was put under and the credibility findings made about him by the court. So we have some evidence about that - those matters directly.

5 **CHAIR:** Counsel, I just wanted to - I think I remember correctly, initially when the first Native Title determinations were made, it was in the Heritage Act that they automatically became registered Aboriginal parties. I am not sure. Has that remained the case?

10 **MR KELLY:** That is the case, Commissioner, yes.

CHAIR: It was an automatic thing that flowed.

MR KELLY: Yes.

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MR GOODWIN: So just before leaving the Traditional Owner Settlement Act, so we have now five consent determinations in Victoria and four Recognition and Settlement Agreements, a number of those overlap with the same groups of people. What responsibility, in your view, does the State bear for the lack of
20 outcomes in terms of - both under Native Title and the Traditional Owner Settlement Act?

MR MATHEWS: I think there's - there's a lot in unpacking the 200 years of
25 colonisation, when you're trying to give people the recognition that is their due, and the consequence of the colonisation is that there is disputes about group membership or boundaries, they are really difficult issues to deal with those issues sensitively until, like, a, you know, a healing, informed, culturally appropriate way, it needs a lot of resource. And I'd suggest that there hasn't been the level of
30 resource there that is required to deal with these issues in a culturally appropriate way. And the Treaty framework - I am hopeful that that does provide an opportunity to deal with some of those - some of that legacy of colonisation that needs to be dealt with, but does provide some scope for doing that beyond what has been provided over the last decade or more since the Traditional Owner
35 Settlement Act came into - was enacted.

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MR KELLY: I just want to - I think that resource issue within the State is something that needs to be highlighted, because often I think there have perhaps been good intentions from the State about coming back with offers or final offers or responding to offers from - in negotiations, or making decisions about whether
40 they recognise and are willing to consent to a Native Title, but then there are often long delays in getting a response, and I think that is - I don't know what happens inside government but I imagine that is got to do with adequate resourcing and maybe at times, Will, within certain departments about wanting to address, you know to deal with these issues. It means that groups do get frustrated because they
45 might have responded to questions for more evidence to be provided or issues to be resolved and then - then it is back in the State's hands and the State takes a very long time to provide a response, so it does - so things - so often the air can then go

out of the process, people are starting to lose momentum and you have to regenerate - "All right, we have had a response from the State, let us everyone together again. Let us consider what is on the table now." I don't know exactly why that is the case but it has been a factor.

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MR GOODWIN: And you are aware there was criticism yesterday by Uncle Graham Atkinson about First Nations Legal's commitment to the Traditional Owner Settlement Act processes. I wanted to give you a chance to respond to that as well as asked whether you've reflected on your own role as an organisation in terms of that history and the outcomes that have occurred or not occurred.

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MR KELLY: Yeah. Yeah. So the criticism that perhaps we have turned away from the Settlement Act and sort of gone towards the Native Title Act, I don't accept that view. I believe that, you know, the work that we do is very much around supporting groups to get to a point where they can make a decision about what form of recognition they want to pursue, and subject to the evidence, then we would act on those instructions to pursue, and invariably - and even when - even back when I was a lawyer working on matters in 2010 groups were saying, "We want to pursue Native Title and we want to pursue settlement, we don't want one or the other, we want both." Other groups to do with evidence or advice received decided to withdraw their claims at the time they were getting settlements. But other groups - and the groups today are very much saying they want to do both, and we have responded to that - to those instructions and we support groups through the Native Title process.

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We are also in a situation where because of the issues which we have canvassed somewhat around the disputes and then when there is a lack of a decision-making body to resolve those disputes, the State will be reluctant to enter into a settlement agreement while there is an outstanding dispute. So there is also - if the group has a Native Title claim on foot at the same time as a Settlement Act process, the State is saying, "Let us deal with the Native Title first then we will deal with settlements." In some cases, settlements have been put on hold while the Native Title process is being resolved. That is not, from our perspective, any moving away from the use of the Settlement Act. If groups wish to pursue it and, in any negotiation, you have to have two parties. If the other party is willing to enter into negotiation, then we will certainly do that work and we are doing that work.

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MR GOODWIN: And in terms of - so the use of the Native Title process, you have mentioned the lack of a decision maker. In that respect, so does the Native Title process give access to a decision maker through the court's own management processes, and decision making by the court, or in some shape or form, that then can act as a circuit breaker in terms of disputes?

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MR KELLY: There has been, in Victoria, we have noticed a trend to separate question hearings, where a judge - where there is a dispute, say, for example, a claim has been lodged then there are some Indigenous respondents who have joined and say, "Well, we dispute the extent of Country for that claim." Or some

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groups saying, "We believe we belong to that claim but you haven't included us." Through the referral to the mediator - often a referral to mediation through the Judicial Registrar, then a process of trying to resolve those disputes, then at times the judge will say, "Well, I will have a hearing on that matter and call evidence,
 5 both Aboriginal evidence and also expert evidence about that matter. And then we will make a determination." And the question of whether there is a connection to Country and ultimately a Native Title outcome is still - that is not being questioned; it is just the question of, you know whose country is it, or who is in or
 10 - there's a number of matters before the court at the moment where we are awaiting judgment on a number of separate question matters.

COMMISSIONER LOVETT: Can we clarify what you meant by Aboriginal evidence and then expert evidence.

15 **MR KELLY:** When I say - "lay evidence" is a better term to use.

COMMISSIONER LOVETT: I think so.

20 **MR KELLY:** Thank you, Commissioner. Where there is the lay evidence given often by Aboriginal informants then there are the researchers who are engaged by the parties who are asked to give their evidence before the court.

25 **COMMISSIONER NORTH:** Mr Kelly, that process is not new, though, is it? I mean, Gunaikurnai is another example where I decided the composition of the group first and then there was a consent determination built on it. So it is sort of a quite traditional, if you like, practice.

30 **MR KELLY:** That's right, that is exactly right.

MR GOODWIN: And just a last question before we move on to reform - the potential for reform. You mentioned the fact of the capacity to renegotiate outcomes under the Traditional Owner Settlement Act, but the First Nations Legal submission highlights that despite review clauses in the Recognition and
 35 Settlement Agreements that allow for renegotiation within five to 10 years, there remains significant delay in those renegotiation processes. So, for example, the 2010 agreement with the Gunaikurnai remains in renegotiation some 14 years later. What are the main causes for the delay?

40 **MR KELLY:** As I understand it, the delays are - come down to - often come down to the benefits, the community benefits that are available to the group as a result of the land use activity agreements where the land use activity agreement is an alternative to the future Acts regime where group gets rights when Crown land
 45 - when their rights on Crown land has been impacted by activity on that Crown land, they might be entitled to some sort of payment. Often the offer that is there but the formula developed through the Settlement Act is not acceptable to groups, so they are wanting it to increase the benefits payable. I understand the

categorisation of the different activities, how they are categorised under the regimes is often a matter in dispute.

5 And then there's also disputes around the nature, the take and use of resources from Crown land, access to flora and fauna, whether they - it's an extent that they can expand upon the rights that they - they ought to be entitled to, and so there are negotiation points around those issues, they are often causing delays.

10 **COMMISSIONER LOVETT:** Rainer, did you want to add anything?

MR MATHEWS: Yes, I think we hear a lot the groups that have settlements have issues with the implementation of the agreements. It is not just the review; it is across the board. They say we have got the agreement, it will look good on paper in this particular - for this particular issue, but we really struggle with
15 implementation. And so then I don't know how that happens, but there needs to be some kind of accounting and - for that lack of implementation and a feedback loop so that that issue can be dealt with and that groups that have the benefits of these agreements can feel like they are being implemented and that they are getting the value out of the agreement that it promises. And so that - that is what they would
20 be raising in the five-year reviews, but it is a big issue.

COMMISSIONER HUNTER: We have heard that in evidence from groups - sorry for interrupting. You just reiterated what we have heard out on Country.

25 **COMMISSIONER LOVETT:** And the Minister said this morning, for Environment, that the Minister for Aboriginal Affairs through DPC now, used to be the Department of Justice, the Attorney-General before, negotiate and then it's handed over to DEECA for implementation. But there is no transition by and arrangements around how the negotiations are happening; it just gets lumped to a
30 different Department then they have to find a way to interpret it. I am not saying it is you know, I am just saying this is the - that was articulated to us, then alongside the evidence we have heard from community there is clearly implementation barriers because there is no clear transitional arrangements in government around what is happening at the negotiation table.

35 **MR CRAWFORD:** Can I just contribute to that. I have clients who have agreements. We're noticing multiple issues, so disputes with proponents Local Government and government about classification of a notification. That is one issue. We have got another really significant issue that some of the local
40 governments are not even lodging notifications, so there is an audit process.

COMMISSIONER HUNTER: Sorry, what are the notifications?

45 **MR CRAWFORD:** When there are proposed activities - it touches on right covered by a LUAA, or a Land Use Activity Agreement, there is a requirement for the responsible person and decision maker to lodge a notification. And because there are so many local governments in Victoria, we are finding that some of the

these local governments are less sophisticated and aware of the LUAA requirements than others. So we're - and the real challenge is, and we are hearing that from multiple clients, is that either there are some very unrealistic classifications and then the problem is under the Act, the only way to resolve those is to go to VCAT, which is obviously a costly and time-consuming process.

But as I said the second issue is in terms of the implementation is that many of these responsible people and decision makers are local council as well as different departments of government and very different approaches to their compliance. And that is - we are seeing many different types of non-compliance, which is problematic.

COMMISSIONER LOVETT: Who gets the final say in the implementation of these agreements?

MR CRAWFORD: So -

COMMISSIONER LOVETT: The Traditional Owners or is it government?

MR CRAWFORD: Well, each issue will be governed by the circumstances that give rise to it. For example, if you have a notification, then a Traditional Owner group who are the holders of the LUAA and signatories to the LUAA can then exercise their rights, and that includes taking the other party to VCAT. But then the problem is we are not hearing about these because they are not issuing the notification. It is hard to know because our clients and ourselves as their lawyers don't have full access to their databases to acknowledge how much of these activities there are to do a decent audit. And then there are other issues as well. Is it five-yearly reviews are meant to capture a lot of this, but in the end I think there is more work to be done in this space.

COMMISSIONER LOVETT: In the VCAT model, it is still the TOs having to go through the whitefella legal system to get any positive determination, really.

MR CRAWFORD: From memory, it's not funded. I will have to qualify that statement, but I am not necessarily sure that those challenges are funded, but obviously I will qualify my answer.

COMMISSIONER NORTH: Am I right in thinking that prior to VCAT, there is a dispute resolution process that they can go through?

MR CRAWFORD: Yes, that is an internal - with the other party to -

COMMISSIONER NORTH: The other party.

MR CRAWFORD: To resolve it. Where there is a responsible model in the government that occasion lay works that is a positive. We do have negotiations backwards and forwards to resolve a decent percentage of those. And it just - and

it tends to be that you will have a particular department with a particular view on an interpretation of - a lot of it is road widening and where there are existing footprints, this is a new road that cause a lot of ongoing issues.

5 **COMMISSIONER LOVETT:** If the State doesn't - there is a lot of
accountability put on the Traditional Owners around the implementation of the
LUAs and the RSA, their roles and responsibilities, and there is issues for them
when they don't adhere to those, their funding gets cut and so forth, we can keep
going on. Then when the government from their side doesn't meet the thresholds
10 and the agreement from their point of view it is, "Sorry, hopefully we get better
next year"?

MR CRAWFORD: You raise an excellent point. I think the resourcing - some of
these issues do come down to resourcing. We have heard from some of our clients
15 that there's very limited funding for their LUAA teams, certainly we are not
hearing funding for either audit-type work or those disputes when there are
disagreements, so yes.

COMMISSIONER LOVETT: Yes. This is hard - hang on one sec. This is the
20 same department they are asking for funding for, in a lot of these instances. There
are not many departments now. They are all mega departments as we know. And
yet the department doesn't adhere to its responsibilities and it is just okay. There is
no accountability mechanism at all the TOs writing and hopefully going through
VCAT another court system, another court system.

25 **MR CRAWFORD:** I think you raise an excellent point.

COMMISSIONER LOVETT: Do you guys have any ideas any thoughts about
what could be done in those circumstances?

30 **MR CRAWFORD:** Resourcing is one of the answers. And arguably you could
redraft, you know, the LUAA and RSA to give greater resolution mechanisms or
an earlier resolution mechanisms and arguably, and this is, I think, touching on
potentially what you were mentioning earlier about accountability, is - it is on the
35 State for noncompliance. Now, that is a controversial statement; I acknowledge
that. But ultimately sometimes accountability does improve adherence and
compliance, but that would be an interesting approach. I acknowledge that is being
controversial and that is coming from me personally.

40 **COMMISSIONER NORTH:** Have you had any cases that have gone to VCAT?

MR CRAWFORD: Not personally. We have some clients who are - who we
support in some parts of the LUAA who work with another barrister who takes
their contested matters and we have got another client who we are trying to be
45 very pragmatic with the departments, and you also need to understand, the
challenge for our clients is maintaining the relationship with some of these
proponents. And so sometimes we have to be very selective, or ultimately our

clients are very selective how they deal with non-compliance, because there is always another classification and another dispute on the horizon, and creating adversarial environments can create really difficult environments to do ongoing business.

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COMMISSIONER NORTH: Have you got any impression of the way VCAT deals with these cases?

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MR CRAWFORD: So beyond the scope of my experience, because I am only new to the organisation and I haven't yet run a VCAT, sorry.

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MR GOODWIN: Just to follow up, my understanding there was an audit of the Dja Dja Wurrung LUAA recently which the Dja Dja Wurrung negotiated - some might say demanded - that the government do, based on some of the problems that have been highlighted. And one of the other issues, if I am correct, Will, that the audit found was a concerning lack of education by the State to third parties and local government with obligations under the LUAA, so some of the - some of the lack of compliance was done to simply not knowing about the existence of the LUAA and that the State had essentially dropped the ball on educating people about their obligations. Is that a fair summary?

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MR CRAWFORD: Yes, and it also raises a very interesting spectre in the Victorian context of planning law having so much responsibility on local governments to approve projects. So we see a lot of new developments through the LUAA's and it appears that the local council will be primarily dealing with the developer proponent at an early stage. And so, yeah, I think there is absolutely - that may well explain some of the non-compliance and the lack of notifications coming through, and we are certainly anecdotally hearing that, so yes.

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MR GOODWIN: So turning then to Native Title reform. The second part of your submission explains why UNDRIP is relevant to land rights and land justice in Victoria. Just in brief summary, can someone please explain the relevance of UNDRIP to land justice?

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MR MATHEWS: So UNDRIP is an international declaration that was put together over, I think, about 30 years in negotiation with Indigenous people and states from across the world, and it is an articulation of principles of international - existing principles of international law as they apply to Indigenous people. And I think it's particularly useful in the Australian context and looking at Native Title, because really it's very simple and the principles that are set out in UNDRIP are very simple principles, and they are that Indigenous people have a right to their traditional lands, that they have a right to control or a measure of control over those lands. If someone takes those lands away, then they have a right to be given the land back, and if the land can't be given back, then they have a right to compensation. That is kind of the essence of it.

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And when you look at Native Title Act and the whole complicated structure that is - has - the whole complicated legal structure that's been built around Native Title it really obscures those kind of simple truths and those simple principles. And when you - so when you look at the - when you look at UNDRIP and you compare it to
 5 Native Title and the body of Native Title case law, there is a stark difference, and the simplicity of it, I think, really cuts through, so when you look at what happened in Victoria, you say, "Well, it's quite simple. Indigenous people have a right to their traditional lands; they always have." Those lands have been taken
 10 away, so they should be given back, if they can't be given back, then there should be compensation.

You know, we can sort of drill down a bit but I think that - to me, that's - it is quite simple, and I think UNDRIP is a very useful articulation of what the relevant international legal principles are and that they do apply to this program.
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MR GOODWIN: I want to explore the - UNDRIP's concept of redress in greater detail. But just first on that issue of Native Title compensation, or compensation in terms of Native Title law, what is the - what is the current state of the law regarding Native Title compensation? And be careful, because one of the people in
 20 this room is intimately aware of the jurisprudence.

MR CRAWFORD: Acknowledging I am in very distinguished company, I will endeavour to do my best to summarise. Before I do, I would like to draw everyone's attention to article 28 of UNDRIP -
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MR GOODWIN: I can put that up, Will, sorry to interrupt you, that is a summary of the principles in articles 28.

MR CRAWFORD: It very much follows on from what Rainer's comments were about that in determining reparations of traditional lands according to an UNDRIP standard. At first instance, reparations are in the form of restitution. To the extent restitution is not possible, reparations are to be in the form of just, fair equitable compensation, including the granting of land equal in quality, size and legal status, and reparations to be adopted are to be decided in light of what is appropriate to
 30 effectively restore the wrongs suffered according to the perceptions of First Nations themselves.
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Now, obviously in Australia there's long been recognised that financial reparations are not always an available or appropriate remedy for the loss of ownership and control of land by Aboriginal people, but we will discuss in further detail some of the reports and recommendations for those earlier reports.
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And if I could just move to your earlier question of the High Court's consideration of compensation for the loss of Native Title rights of the Native Title Act in the case of *Northern Territory v Griffiths*, AKA - often referred to as the *Timber Creek Case*. Obviously this is significant because it's the leading - and I may be corrected - the only judicial consideration of how compensation is to be calculated
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under the Native Title Act. But before we go into the details of the Timber Creek case, it should firstly be noticed that the rationale for the compensation under the Native Title Act is designed to compensate for the loss of Native Title property rights, whereas reparation under Treaty should consider broader issues of collective loss of social, economic, political, cultural and spiritual values as a result of historic assimilation policies, forced removals and discrimination.

So just to make that distinction, that - the Timber Creek case refers to the Native Title Act in section 51 and the court's interpretation of how that should be applied. Now, also it is useful to acknowledge that the Native Title Act was enacted by the Commonwealth in response to the High Court decision in *Mabo v Queensland (No. 2)*. It is based on the principle that where Native Title rights persist, it is discriminatory under the Racial Discrimination Act to treat these rights differently to other forms of property right. It was the potential for discrimination at law that the High Court said that gave rise to the need for legal recognition and protection of Native Title.

And as a result of this and the history of Victoria's colonial history, both squatting dating back to the 1830s and the founding of the colony in 1851, Victoria has a large proportion of its landmass which is subject to freehold title or other Acts that have extinguished Native Title prior to 1975. And accordingly, much of Victoria's landmass is not eligible for compensation under section 51 of the Native Title Act. Now, moving to the specifics of the *Timber Creek Case*, the High Court in the *Northern Territory v Griffiths, Timber Creek*, was asked to calculate compensation for the loss of non-exclusive Native Title rights. And the calculation for compensation was really divided under three heads. The first head was that of economic loss, and the High Court looked to the value of the land, so there was evidence from land valuation, and ultimately held that largely on the basis that it was non-exclusive Native Title that an appropriate value was 50 per cent of the value of that land. And interestingly the court adopted a valuation test called the Spencer Test, which is to ask what is the sum would a willing but not anxious purchaser would have been prepared to pay to a willing but not anxious vendor. And that is just a principle under valuation law.

The second head is also of note. It is the non-economical cultural loss. The High Court didn't interfere with the judge at first instance's decision or valuation at 1.3 million, which is approximately double the value of the unimproved capital value of the land. It should be noted that the evidence established in the case of Timber Creek involved cultural loss that included construction of water tanks, which crossed dingo dreamings, the loss and impairment of the group to conduct ceremonies on those sites, and thirdly, a profound sense of failed responsibility to care for land as a result. And ultimately, the test comes down to in terms of determining the quantum, what is the amount which society would rightly regard as an appropriate award for that loss.

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Now, the third head is an interest payment on the economic loss. And in this instance, it was found that simple interest was granted and calculated on that economic loss being the first head. I understand that compound interest was not pleaded and the court acknowledged that it would accept submissions in future cases about compound interest, where there was evidence where groups had potentially intended to invest. So as I said, there are some interesting observations about *Timber Creek*, and we acknowledge that this is a relatively novel area of jurisprudence and that there will be further cases and, ultimately, consideration of aspects of that decision.

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And also the facts of *Timber Creek* involved land around a regional urban centre, it wasn't on farmland, it wasn't on mining land, and so that there - were expecting the growth of jurisprudence in this particular area. So that is as succinct a summary as I am able and I am sure others can provide more.

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MR GOODWIN: I want to highlight one particular thing that you mentioned. So the current state of the law is that prior to 1975 and the introduction of the Racial Discrimination Act, States had the power to extinguish Native Title without compensation. So that has a huge impact on Victorian Traditional Owner capacity to seek compensation under the Native Title Act, doesn't it?

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MR CRAWFORD: That's correct. So I don't have the figures on me in terms of the amount of land where there is prior extinguishment, but I would imagine it would be a very - reasonably large percentage.

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MR GOODWIN: And I won't go in detail into it, because of course there will be other witnesses that will be questioned about the First Principles Review, but the First Principles Review was conducted by the Federation of Victorian Traditional Owner Corporations and the State in response to the decision of *Timber Creek*, and at the behest of the Federation. Key recommendation of the federation that was not joined by the State was recommendation 2, which states:

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"The calculation of compensation should not be limited to acts that occurred post-1975."

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And that recommendation is now up on the screen. Does First Nations Legal agree with that recommendation, and if so, why?

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MR KELLY: Yes we do agree with it. And the reason why it is just such an injustice, that extinguishment that happened - to me, it is arbitrary, it is 1975. Yes it is linked with the Racial Discrimination Act, but it's - the land was still - Native Title that was extinguished prior to that ought to be compensated for, regardless of whether there was a piece of legislation which says compensation is payable or not through the Racial Discrimination Act. It is just a matter of justice.

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MR GOODWIN: Are there any compensation claims on foot under the Native Title Act in Victoria?

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MR MATHEWS: I will add to what you said. It is also - it's legally inappropriate when you look at what the state of the law is as articulated in UNDRIP, but the date of 1975 is - from the perspective of UNDRIP is it's wholly arbitrary, so its
5 unjust, but it's also not defensible legally when looked at through the lens of the international law as articulated in UNDRIP.

MR GOODWIN: I am about to turn to the UNDRIP and its framework, but, Chair, I do note the time and I have been a little longer than I anticipated. I've
10 probably got another 15 or so minutes. Would you like to take a break or would you like to push through?

CHAIR: Yes, keep going. Thank you.

MR GOODWIN: So then turning to UNDRIP's framework, the submission highlights that - and Rainer, I think you have given evidence about this - that it's important to draw a distinction between that article 28 of UNDRIP and the concept of redress, that it talks about compared to compensation in the Native
15 Title context. So compensation, the submission states compensation in the Native Title context is compensation for something very specific, in terms of loss of
20 Native Title rights and interests. But it also is limited in nature of what the compensation is - it's pretty much financial - rather than what UNDRIP talks about, which is broader concepts of restitution, which involves the land in question back and, if not possible, other forms of restitution in other land,
25 non-economic compensation as well as monetary or economic compensation. So there are a number of comparative models of economic compensation.

First I just want to focus on in an addendum to the submission which sets out some international models that might be of relevance to redress in Victoria. Will, I
30 am just interested, if you wanted to summarise what First Nations Legal found about the approach in particular in some Canadian treaties about the issue of economic redress.

MR CRAWFORD: Yeah. There's some really interesting international examples I would like to point to. And very quickly, I'd also direct you to our
35 recommendation 8 which is that there need to be further work in analysing in doing cross-jurisdictional analysis. We've only attempted to do some examples. In terms - and if I can direct the Commission's attention to the Metis Settlement. There are very interesting provisions in that, which include requirements for
40 agreement making in energy and resources. So an example is - sorry, if I just capture it, the - it - so there's multiple ways to approach compensation and it is acknowledged that every jurisdiction will have different fiscal constraints, but there are some creative ways around it.

45 So if we look at the Metis Settlement, it talks about it creates a co-management agreement which govern settlements in relation in relation to mining and resources, and it requires or it gives Traditional Owners the right to negotiate with

an oil and gas company development with - or gives rights to negotiate which is significant. Further, those rights include the rights to negotiate equity participation of up to 25 per cent in any development, with the successful bidder on a mineral lease, which is a novel and potentially noteworthy right.

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It also provides specific opportunities for 100 per cent owned Metis settlement corporations to secure direct purchase of mineral leases outside of the public offering processes, which are encouraging Traditional Owner entities to be able to engage in business, also the rights for corporations to bid on public offering mineral leases, so there are multiple ways this can be done, and we'd certainly direct people's attention to the - yeah, to some of the treaty-making provisions in model jurisdictions.

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MR GOODWIN: Even though it was in the context of a Native Title compensation settlement, there is an interesting model agreement of the Jaru people of Western Australia by the Western Australian Government under the Indigenous Land Use Agreement. Can you just briefly take us through some of the features of that settlement agreement.

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MR CRAWFORD: Thanks for your question. I think it really points to the need for some creative approaches to reparations and the granting of rights. And so the Jaru process, we understand, involved multiple parties and the State, and it took place over a number of years. In terms of some of the key provisions, there were the granting of water licences, and also joint management, the creation of joint vesting and joint management of conservation estates, the transfer of lands, and the ongoing support with making additional fund applications for funding. So really practical assistance in helping the Jaru with their rights and the participation of working groups to support Jaru businesses and economic businesses, and we are seeing a lot of these developments in Canadian examples as well.

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So - and I think - just very quickly touch on the importance of land grants. We talked about it earlier and I think there needs to be some portion of about which land and the value of that land. There are some really good examples in New Zealand where valuable Crown land with existing assets can be granted and then leased back to Traditional Owner groups, and the advantage of that is Traditional Owner groups is getting a valuable asset maintained by the State and is generating an income stream from a tenant who is looking after that. So, yeah, I think the examples of Native Title can be highly illustrative, likewise some treaty settlements under the Waitangi Tribunal in New Zealand can be very illustrative of the variety of ways that both economic reparations can be incorporated, and also meaningful benefits as well.

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MR GOODWIN: And just finally on economic models of compensation, it's - I commend to the Commission as attachment three of the addendum on economic compensation, which summarises the Jaru ILUA. In terms of the money that was received as compensation, there was a significant one-off cash payment which was the negotiated settlement sum for the loss of Native Title rights of just under \$19

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million, but then there were additional amounts provided, sometimes in instalments for research and development fund, an economic empowerment fund, an implementation fund, so money to actually implement the agreement that was negotiated with the State, as well as funding for a socioeconomic baseline study to inform economic development for the Jaru people.

Even when it comes to a raw figure there are multiple it was a - you can - that you can negotiate that income to serve different purposes, to build a sustainability for the agreement. Would I be right in saying that?

MR CRAWFORD: Yes, certainly. And one that you touch on there, Tim, is the analysis of the efficacy of these agreements. Now I think there's some value in the Treaty process looking to some research done internationally about the economic and social benefits of treaty making. I just acknowledge that this was not included in our original submission, but it is come to our light that there is economic analysis of treaty making in Canada, delivered by Deloitte. And in that, they - it was a 2016 report which has been published. I will just - I'm trying to locate that title. The document is called The Socioeconomic Benefits of Treaty Making in British Columbia, and it was published in 2016.

It is interesting because it looks at both the financial and economic benefits of modern treaty making for both First Nations people but also British Colombians and Canadians, so it looks at some of the budgetary impacts of that. Now, like any other economic modelling study, it will be limited by the data available. But what the conclusion that came from that was that some of the initial modelling analysis had been done by the British Columbia Treaty Commission itself, and then it engaged Deloitte to review that data. And as part of that review, Deloitte concluded that the updated models, because there were five separate reports produced by the British Columbia Treaty Commission, and the conclusion was - the updated model showed that there are economic benefits to both First Nations and net economic benefits to British Colombians for settling treaties.

Now, obviously this is a relatively novel area for everyone in terms of analysis, but some preliminary areas for potential exploration are obviously looking at some of the employment benefits of supporting Traditional Owner Corporations through a treaty process, and also potentially some setting some targets for agreement making as has been done in the Metis Settlement Act, and then making assumptions about how those benefits might impact and improve a whole range of social determinants, and then potentially modelling the benefits to the state of long-term budgetary savings to improvements in the wealth and wellbeing of First Nations people.

MR GOODWIN: And just the final example I want to go to is the Tūhoe deed of settlement. That's in the second addendum on non-economic reparations commencing on page 20, going on to page 21. Just for the operator, that was the final document. So we have got it up there. That is a number of matters negotiated both economic and non-economic so NZ\$170 million dollars for financial and

commercial redress, but also a National Park land being vested with legal identity and protected under standalone legislation, that the Ngai have the opportunity to purchase five Crown-owned properties within a particular period. They have got an exclusive right of first refusals under Crown-owned properties, that there is a
 5 investing of full ownership of seven sites of significance, there is various recognition statements made, place names altered. So it highlights this type of agreement, it highlights the full plethora of potential redress that might be negotiated between First Nations and the State. Is that right?

10 **MR CRAWFORD:** That's correct, and I think it also reflects the really the thorough negotiation process. And I think when you look at a settlement agreement like this under the - under the Tribunal, it is clearly holistic and comprehensive as you have illustrated. But it is reflective of communication and negotiation over a significant period of time. And I think in terms of observation
 15 and reflection that the high quality engagement with Traditional Owners over a period of time, and for that time to explore multiple avenues for redress, will come up with better options. And so part of our recommendations, as we have already illustrated, is the need to do further cross-jurisdictional research to bring that to the table, so everyone can share in those benefits. But also to identify the need for
 20 patience and high quality engagement with participants so that various avenues can be explained.

Because if we look at this particular settlement agreement, it covers obviously monetary compensation, but also there were some really significant commercial
 25 advantages of these purchases of State assets that can be rented back as an income stream to the Traditional Owners, but also really significant involvement in government processes. And it seems as though the creation of the national park, also legislation to accompany that is not joint management as we understand it, but the creation of new jurisdiction. We see that far more in Canada where there
 30 are far more progressive and advanced self-determination rights given in reservations to First Nations groups to not only do management of land, conservation management, but also justice management, housing and a whole range of rights that we often associate with local government and even many State government functions. And I think that is the advantage of further research and
 35 exploration of the - of other jurisdictions to identify the potential, because we have seen the Canadian examples and the New Zealand examples have developed some - or delivered some really high quality self-determination functions.

40 **MR GOODWIN:** So my final question to each of you is to ask what the aspirations of First Nations Legal are for the Treaty process, but also what your own individual aspirations are for the Treaty process.

45 **MR KELLY:** First Nations aspirations, and my personal one, would be that all these issues that we have discussed today, the issue of compensation, from '75 onwards, this issue of having to prove who you are against the odds is no longer - is dealt with through the Treaty process, groups can go beyond the restrictions that the statutory regimes have imposed on them, so that is huge aspiration for Treaty.

And that is on a macro level. On a micro level, what an aspiration would be is that groups as they negotiate treaties who have yet to have a Native Title determination find ways to align their process under the treaty with that under the Native Title Act so that we don't end up with one group defined one way of pursuing Native Title over one piece of the country but a group defined slightly differently, and pursuing treaty that there is alignment of the processes in recognising that they are different jurisdictions, but certainly we would see that that would lead - that wouldn't lead to further trauma, further conflict and slow both processes down, so we ask - we are committed to working with the institutions and the Traditional Owners to find - and the court, to find ways that ensure that the processes are aligned to the extent that they can be.

On a personal level, I am looking forward to being able to hold up my head high as a non-Indigenous Australian and say that I am proud to be a part of this country that recognises fully the First Nations inhabitants, that respects their cultures and that I feel a beneficiary of the sharing of that culture, and knowledge. I also look to see that other jurisdictions in Australia cannot be so frightened of what treaty has to offer, that they can one day - perhaps their inquiries, they will be people giving examples of what has happened in Victoria how the sky's the limit, and we can - you don't have to be frightened of it. There are benefits to be gained for everybody.

MR MATHEWS: Hopefully in the next little while that formal groups on their formal recognition journeys in Victoria so the groups that don't yet have Native Title, don't yet have a settlement under the Settlement Act, will progress through a process that allows them to get that recognition. I think that can happen quite quickly, if it is properly resourced, and I think the Treaty framework provides that - that resource. If resourcing is there in the framework for that work to be done, and I think it can be done and it can be done fairly quickly.

I think there needs to be a process of exactly what this process is, a process of truth-telling and accounting for what has happened in the past, a discussion around compensation, reparation, and not shying away from that conversation, but a - everyone coming together and talking about, talking - what's happened and how can we provide compensation for it. I would see structures put in place for self-determination, for groups to be self-determining, to have control where they can of their own business, and that would involve a devolution of power from existing arms of government, so State government and local government in particular areas that are relevant to First Nations.

And then I would see - I'd want to see groups sufficiently resourced so they can realise their aspirations, whether that is in business or the arts or whether it is just getting back on to Country, but having a sufficient resources in order to do the things that they want to do, and I would imagine that if that - if they were to happen, we will see a flourishing of those groups and it will have substantial benefit to the State of Victoria and everyone in it.

MR GOODWIN: Will?

MR CRAWFORD: I would like to see the process leading to far greater economic empowerment of Aboriginal groups to have meaningful benefit sharing of many projects. I think there is some creative ways if we look to how things are done in Canada in terms of reforms to tendering and licensing of mining and resourcing and energy projects to better include First Nations people. I think flowing on from sharing those benefits, I think there is far greater opportunities for everyone to pursue greater self-determination for First Nations groups and for the State to support that, because I think without funding and support it can sometimes be difficult for groups to take advantage of economic opportunities without that support. And also there is many opportunities in areas that will be discussed through this process. I welcome that.

In terms of, I think, another thing I would welcome is that everyone is here and listening and that there will be many perspectives on things, and I think it - you know, I'm grateful to be part of it, and also I think that the fact that the process exists means that this dialogue is happening and there is hopefully some really useful discussion and that people are listening and sharing to hopefully progress treaty aspirations of First Nations people.

MR GOODWIN: Thank you all. Those were my questions. Commissioners?

COMMISSIONER NORTH: I just have one, which brings us right down from the stars that we have just been at, but recommendation 3 is directed to - this is the recommendations that you suggest, on page 24, it's a recommendation which goes to a practical measure to improve the Native Title process. And it advocates for the use of the referee process in the Federal Court, which I don't think is much use at the moment. But it cites a case of *Singleton*. I just wondered, who constituted the panel in *Singleton*? Because you advocate for this as being a culturally appropriate way of addressing Native Title claims, and you suggest that under that rule the referees could include, for instance, Elders or Aboriginal people of higher standing. Was that used in *Singleton* for -

MR MATHEWS: I can't remember who was on the panel in *Singleton*, but I - I seem to remember it was an anthropologist, but I might be wrong. But the - what we're grappling with there is that the Treaty Authority under the treating framework has the authority and responsibility to resolve disputes between parties that are engaging in Treaty negotiations, and it has the - it is given the power to do that in a culturally appropriate way and in a healing and informed way and to develop its own structures to do that. But we see there is there is a danger there, there's a disconnect, if there is a decoupling of the Native Title process and the treaty process, that if you have the Treaty Authority doing a culturally appropriate healing, informed self-determining way of resolving disputes, and they come up with - arrive at an outcome but then you have got a parallel process that is progressing in the Federal Court which is a Native Title process, and if they come to different - different results, then you have got a really big - you have got a

problem with - you have got a traumatic situation for the people involved, and so the referee process was a way that we saw of the different entities working together so that if there is communication and collaboration between the treaty entity and the court and the parties to the dispute, that the parties could submit to a process that is set up by the Treaty authority, that - that the court is also happy with, and then you'd have an alignment of the two processes. And so -

COMMISSIONER NORTH: That explanation's not in a submission that makes for a much fuller explanation. Because as things stand as of five years ago, the Court had a process which was which was although ultimately overseen by registrars, but it was very much devoted to self-determination because it sat the parties down and said, "Well, you work it out" with facilitation of registrars. I wondered why you thought there was some point in a departure. Because this process had been talked about in decades within the court and was never used. But I think what you have told me now explains why, in this environment, it might be a different situation. Yes, thank you.

COMMISSIONER LOVETT: Just in relation to the Right People for Country program, we skipped over that right quick, I just wanted to ask through that program, how many Traditional Owners why able to work through the process to receive a recognition, even just under the Heritage Act?

MR KELLY: I don't have the numbers there for you, sorry, Commissioner. I know that there - I am aware of one particular negotiation - boundary negotiation, that happened under that program that led to a revolution of (indistinct) for the group so that is certainly one significant outcome I am aware of. And I am also aware of where the program was used more to bring groups and families already in an existing group that already had recognition that had fractured over certain issues to find a way to communication with each other to strengthen their capacity as a Native Title holding group to significant effect. So that - I am aware of that happening on two occasions. So in terms of boundary disputes or group disputes, I am only aware of one, it might be more. In terms of building capacity within groups then to manage to govern their interests better, there is a couple.

COMMISSIONER LOVETT: When was the last time a RAP was appointed in Victoria?

MR KELLY: I think the first time of (indistinct) up in Mildura five or six years ago.

COMMISSIONER LOVETT: Yes. So it's been a long time since people have had been able to go through the process, some being self-determination not choosing to go through the process, but also still it is a very long time. I have got one other thing of the we understand you have a difficult job as the effective rep body in Victoria for the work you do. But do you have anything to say to TOs watching today that have been hurt by the system that you are administering, or have been felt like they have been left behind in the process?

MR KELLY: We have certainly heard that message, and it is certainly something that we are very mindful of, that the process of Native Title does result in people not happy with outcomes, and some of - sometimes they see us as a Native Title
5 service provider as being responsible for that. To address that, 12 months ago, 18 months ago, we commissioned a strategic review into our organisation, and to look at that question of what really - in one way of putting it, do we have a social - what is our social licence to operate in Victoria, given there's all of these changes, given that more or less we have been operating much the same way for two
10 decades, and we needed to have a good hard look at whether that that was the appropriate way to operate. So we did that review. In that review, opportunities were provided to groups who have been formally recognised and groups who haven't been formally recognised. Other stakeholders the State, other stakeholders, the Assembly were given the opportunity to participate in that review and one of
15 the outcomes or all the recommendations of the review we have implemented and a particular outcome which I think is relevant to this question is trying to decentre ourselves from the disputes.

In the past, I mentioned this right at the beginning of this hearing one of the
20 changes we have made rather than always being a representative for a group we will step back from that, and where possible provide resources for a third-party lawyer to provide the representation to the group. And in doing that we are also saying that if any parties - any groups who are going through the process of formal recognition and there are still disputes, we will, to the extent we can, make
25 available our research materials that have been collected over many years, so that the relevant parties to the disputes can - can have that material to resolve their disputes. And also use - we have also got capacity - we have got a database of people who we have worked it over many years to make those resources available so that people can self determine their outcome and - rather than rely on us to do
30 all that work. We've also - we've also set up a process where - where groups are coming to seek funding from us, rather than me as a CEO being the sole decision maker of that, we have created a committee and a sub-committee of the board with an independent expert, nothing to do with Victoria on that panel to be able to provide some guidance around decision making about which groups will get the
35 support, and also working to the extent we can our funding body National Business Australian Agency to ensure there is more money in the system for Victoria because it is more expensive. When you bring in third party lawyers, it costs more than having the in-house capacity here. So working with them to say, if you can bring the money in there are these - there is six claims on foot at the
40 moment. There is likely to be more, in the forthcoming future. Some of those claims we represent. The parties, some we don't. Even where we don't represent working with different parties to those claims and also NIAA, the Commonwealth to ensure that funds are provided to all the groups so that they can resolve their disputes and their issues and have their recognition through that process. So
45 moving to a more facilitative brokerage role rather than a direct representation model to the extent that we can.

COMMISSIONER LOVETT: Last question. No, go.

MR MATHEWS: Thank you. This is an important question for us as an organisation, there are many things I feel we could have spent the whole time
5 talking about how we as an organisation engage in this space, and I can give some
- I can give some very personal reflections.

COMMISSIONER LOVETT: That would be great.

10 **MR MATHEWS:** Rather than more general.

COMMISSIONER LOVETT: That was the sentiment of the question, yes.

MR MATHEWS: My journey in Native Title has been working as a Native Title
15 lawyer working closely with groups originally in the Pilbara. And through that
process - through that work, having relationships with the people, saw a lot of
trauma in people's lives, a lot of people that I know very well passed away. There's
been a lot of, you know, all of the stuff that happens in Aboriginal communities.
Then in - for me in my career, there is a big turning point in the middle of my
20 (indistinct) which is when my wife passed away, just after we had had our second
child. So I was widowed.

And that experience really changed - changed the way that I thought about the
work that I had been doing with my clients and really changed the way that I saw
25 those traumatic experiences, and the best way that I can explain it is that my
engagement with the trauma went from my head to my body, like I felt - I felt the
trauma, in - not in any way to say that I could understand what someone who has
complex trauma, intergenerational effects of trauma is experiencing, but my
personal experience of it was now I am feeling it in my body, and for a while I
30 thought, I want to get out of Native Title, it's too - it's too hard. We cop a lot of -
cop a lot of abuse. It is a difficult space to work in. And I thought maybe I am too
broken now to be in the space, but then it was the - it was the healing and the
thinking about - thinking about trauma and healing that brought me back into the
space and also brought me to this - to First Nations Legal, because there is a board
35 with a strong commitment to healing and a strong commitment from the staff to
healing and - so that was kind of my way back into the work and it is something
that - that I spend a lot of time thinking about in the work, and that we spent a lot
of time as an organisation talking about, because stuff comes up every day where
we have to - we have to address, it is a difficult - it is a difficult space to be
40 working in.

And so to people that are listening to this conversation now, to be saying, your
voice is really important. We want to hear what you are saying, we want to hear
what you think that we have done wrong, we want to engage in conversation, and
45 through that conversation maybe we can do things better, or maybe we can give
you some comfort, maybe not, but let us have the conversation. And part of our -
part of the intention behind our review was to reach out and say, "We have got

some independent people here to go out and talk to everybody, talk to our critics, talk to our proponents, talk to the people who like our work, talk to people who don't like our work, and come back with a report."

5 And that is the report that we got back then we got recommendations to - for
example, being more neutral in - in the disputes that - take a more neutral stance in
the disputes that occurred between the families that we are working with or the
groups that we are working with. And so now we are trying to implement the
recommendations of that review, but also wanting to keep that door open for
10 people to come and talk to us, and want to like commend this kind of space. But
truth-telling is so important, and so important for people to have their say and have
their say about us as an organisation space and have their say about Native Title,
have their say about the settlement process, have their say about Treaty.

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

MR GOODWIN: Chair, I hate to end on this note but I will just tender some
documents before we finish there. But I thank the panel for their reflections
deeply. So I will tender 16 documents associated with the Minister's evidence
20 given this morning, noting that the statement has already been - the Minister's
statement has been tendered. So I will tender those documents, and then I will
obviously tender three documents associated with the evidence from our panel this
afternoon, which is the Submission to Yoorrook from First Nations Legal and
Research Services, and the two addenda to that submission.

25 **CHAIR:** We will enter that into our records, thank you. I declare that we are
adjourned for today and we will recommence tomorrow morning.

COMMISSIONER NORTH: May I thank the panel particularly, because it's an
30 area -

CHAIR: Yes.

COMMISSIONER NORTH: - of my special interest. I think your submissions
35 and your contributions today have been extremely thoughtful and creative, and I
think will help us considerably in this area.

CHAIR: Thank you.

40 **MR MATHEWS:** We are echoing the same sentiments.

CHAIR: A very good session, a very deep session, thank you.

<THE HEARING ADJOURNED AT 4.29 PM