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TRANSCRIPT OF DAY 7 – PUBLIC HEARING

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

**WEDNESDAY, 17<sup>TH</sup> OF APRIL 2024 AT 10.00 AM (AEST)**

**DAY 7**

**HEARING BLOCK 6**

**MR TONY McAVOY SC, Senior Counsel Assisting**  
**MR TIMOTHY GOODWIN, Counsel Assisting**  
**MS GEMMA CAFARELLA, Counsel for the State of Victoria**  
**MS MAYA NARAYAN, Counsel for the First Peoples' Assembly of Victoria**

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**<THE HEARING COMMENCED AT 10.12 AM**

**COMMISSIONER LOVETT:** Welcome to today's hearing of the Yoorrook Justice Commission. Today we continue the inquiry into land injustice block 6. I want to  
5 acknowledge and pay appreciation to Colin Hunter Junior for his Welcome to  
Country earlier on the rooftop as well. Always really important that we participate in  
ceremony and practice our culture as our ancestors, as we have heard through  
evidence, we are not able to do that because of government policy of the time and  
direction. If I could (speaks Dhauward Wurrung) also just acknowledge and pay my  
10 respects to the Wurundjeri people of the Kulin Nation and recognise that - their laws,  
customs and spirit creator, and we are here to talk really strong on Country here  
today and it's a great opportunity for us as well to continue on our old people's voice  
and strength. If I could please have appearances, Counsel.

15 **MR McAVOY:** May it please the Commission, Commissioner, I appear on behalf of  
- I appear as Counsel Assisting for the purpose of these witnesses.

**COMMISSIONER LOVETT:** Thank you, Mr McAvoy.

20 **MS NARAYAN:** If it pleases the Commission, I appear for the First Peoples'  
Assembly of Victoria.

**COMMISSIONER LOVETT:** What's your name?

25 **MS NARAYAN:** Ms Narayan.

**COMMISSIONER LOVETT:** Thank you.

**MS CAFARELLA:** Good morning, Commissioners, my name is Gemma Cafarella  
30 and I appear on behalf of the State of Victoria. On behalf of the State, I would  
acknowledge that today's hearing is being held on the lands of the Wurundjeri  
people, and I acknowledge them as Traditional Owners of this land. Sovereignty was  
never ceded over this land. The State pays respect to Wurundjeri Elders past and  
present, and I acknowledge all First Nations people, and in particular First Nations  
35 Elders in the room today and watching online. And I would like to specifically  
acknowledge the members of the First Peoples' Assembly who are here today. Thank  
you.

**MR McAVOY:** If the Commission pleases, we propose to call witnesses from the  
40 First Peoples' Assembly of Victoria this morning. The witnesses are here in the  
hearing room and ready to proceed, and I call Ngarra Murray and Rueben Berg.  
Now, I would first ask, Ngarra, to just confirm for the Commission your full name.

**MS MURRAY:** My name is Ngarra Katy Murray.  
45

**MR McAVOY:** And the evidence that you are about to give to the Yoorrook Justice  
Commission, will that evidence be the truth to the best of your knowledge?

**MS MURRAY:** Yes.

5 **MR McAVOY:** And Mr Rueben Berg, do you tell the Commission your full name, please.

**MR BERG:** Rueben James Hamilton Berg.

10 **MR McAVOY:** And could you confirm for the Commission that the evidence that you are about to give will be the truth to the best of your knowledge?

**MR BERG:** Yes, it will.

15 **MR McAVOY:** Thank you. Now, should I call you Ngarra?

**MS MURRAY:** Yes.

20 **MR McAVOY:** Is there a formality that we ought to observe, a protocol that we ought to observe at this point in relation to a minute of silence?

**MS MURRAY:** Yes, the Assembly has requested a minute's silence, and there is a statement that they have asked me to read.

25 **MR McAVOY:** And perhaps if we - if - perhaps if you make the opening statement now then we proceed to a minute's silence, that would be appropriate.

30 **MS MURRAY:** The Assembly members pay respect to the warriors of the Frontier Wars and resistance fighters who made the ultimate sacrifice to protect their country. We mourn our ancestors with the honesty and integrity. It is Assembly practice to have a minute's silence, we have asked for the Koorie history website that the massacre map of Victoria to be displayed as we stand for a minute's silence.

[Minute's silence]

35 **MR McAVOY:** Thank you, Commissioners. Thank you, Ngarra. Were there any other opening comments that you'd like to make?

**MS MURRAY:** Yes, I'd like to read my opening statement.

40 **MR McAVOY:** Please proceed.

45 **MS MURRAY:** It's a great privilege and responsibility to be part of this important truth-telling process. I want to start by acknowledging the Traditional Owners of Country where this office of the Yoorrook Justice Commission is located on the lands of the Wurundjeri Woiwurrung people. I recognise the care they have for their Country and ongoing work to protect and heal Country. And we thank Colin Hunter Junior for the Welcome at the smoking ceremony this morning. My family have had

strong relationships with the Wurundjeri Woiwurrung over generations, through my grandparents in particular, Pastor Sir Doug Nicholls and Lady Gladys Nichols, and my grandparents, Stuart and Nora Murray, and those relationships continue today with the Wurundjeri Woiwurrung and our families.

5

I am here with a combination of roles, I'll share my stories as someone with a deep connection to my lands and communities, as a First Nations woman of the Wamba Wamba, Yorta Yorta, Dja Dja Wurrung, Dhudhuroa, Baraparapa (indistinct) but I am also here with Rueben Berg as the Co-Chair of the First People's Assembly of Victoria. I want to thank all of the other Assembly members who have come along today to support us.

10

I know many in our communities have faced incredible injustice in their lives and many carry the weight of intergenerational and collective trauma. I hope our truth-telling and answers to your questions today will contribute to the healing process. Before we get going, I want to try to summarise some of my thoughts about Country, as it's sometimes difficult to put into words, for those who are not First Peoples, what Country means to our people.

15

Country is the essence of who we are, Country is in our blood, and our blood is in this Country. Our Countries right across this state have the markings of our history. This is Country that has felt thousands of generations of footsteps and was criss-crossed by all our families. Our Country was pristine and plentiful of resources and we lived in harmony with the lands and waters within our kinship structures and where the foundation of our relationships was based on our coexistence. We worked alongside and as part of our environments, connecting us to every part of the cosmos - that's lands, waters, sky, stars, plants and our totems. We had ceremonies and songlines and trade with our neighbouring tribes. We came from ancient jurisdictions made up of tribal territories, laws, traditions, rules and values that were effective for thousands of years and which tribes continue to adopt and collectively organise themselves.

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30

Our people's relationship with this country has been formed over thousands of generations. This unique connection has built up a profound intelligence and specialised knowledge about caring for it. Our old people instilled in all of us a culture of caring for the environment. Their old people told them the same and we will tell our kids the same.

35

The disruption to our society was catastrophic. Invasion and colonisation saw concentrated and sustained attempts to smash our societal structures and eradicate our people. The colonisers' approach to land management pushed our land to the brink of ruin and the colonisers exploited Country for the higher short-term economic benefit. The Dja Dja Wurrung use the term upside-down Country to describe the enormity of impacts that colonisation has held on our lands, the land clearing and gold mining.

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45

The harm caused by our dispossession cannot be understated, and while the theft may have commenced 200 years ago, the negative effects have rippled down generations and compounded the unfairness. Despite everything that has been inflicted on us, we have survived and our connection to Country remains strong and our story is in this land.

The fight for land justice began with our ancestors and continues today. Land justice is foundational to our journey to freedom, self-determination and empowerment. Today we are faced with a divide between those whose wealth was stolen and those who grew and passed down that stolen wealth. This is what we need to address. This is why we need to negotiate a better, fairer deal for our people through Treaty.

The Assembly has a strong purpose, and that is to reclaim our people's power and freedom to make the decisions that affect our families and our communities, our Country, our lands and waters. In Treaty, we have a critical opportunity to heal the land. When we can repair, rekindle and expand our ability to care for Country, both the land and our communities will thrive. When that happens, everyone benefits. Everyone benefits that lives on this Country. We have 60,000 years of Aboriginal custodianship of this land. This is what makes our Country so special. It has to be protected for future generations, to ensure a healed and healthy Country for all of us.

In closing, I want to thank the Yoorrook Justice Commissioners and acknowledge the important work they do. In establishing the Commission, we gifted to the Commission the Wamba Wamba - Wamba Wamba word "Yoorrook", meaning "truth", to represent the value of our living culture and the importance of the First Peoples being at the centre of the Commission's inquiry. The word "Yoorrook" pays homage to a long line of warriors, men and women who have fought over generations against the callous, discriminatory and oppressive forces of injustices and human rights abuses over our people. The Assembly is appreciative, and we acknowledge to the extent the Commission has given effect to and respected the significance of this term throughout its inquiry.

Finally, on behalf of the First Peoples' Assembly of Victoria, we offer our gratitude to the many First Peoples who have shared their stories for truth-telling. Thank you, Tony and Commissioners, and for letting me get warmed up - I am a little bit nervous. I have to try and relax a little bit. And Rueben and I will be happy to answer any questions on behalf of the Assembly. Thank you.

**MR McAVOY:** Thank you, Ngarra. Now, the First Peoples' Assembly of Victoria has provided a submission to Yoorrook. And it should be in the Commission's papers. There is also a statement dated 11 April which you have prepared for this hearing, Ngarra. You are familiar with that statement?

**MS MURRAY:** Yes, I am.

**MR McAVOY:** And the contents of that statement are true and correct?

**MS MURRAY:** Yes.

**MR McAVOY:** Commissioners, I tender that statement from Ngarra Murray dated 11 April 2024, and I understand it will be given a document number in due course.

5 Now, the - that statement contains a number of matters which are personal to you in relation to your family and ancestors. But it also speaks to matters which are - you are speaking on behalf of the Assembly and going to matters relating to Treaty. I just might turn to Rueben for a moment. As a Co-Chair, are there elements of that statement that you would adopt?

10

**MR BERG:** Yes, there are, yes.

**MR McAVOY:** And you have provided the Commission with the paragraphs of the statement that you adopt?

15

**MR BERG:** Yes, I have.

**MR McAVOY:** Thank you. Now, there is an intention, Rueben, to come to you when we come to the matters particularly relating to the business of the Assembly and Treaty business. But for the moment, we might deal with the matters contained Ngarra's statement about her family history and the continued assertion of authority and resistance that that statement involves. Are you able to speak to those matters now, Ngarra?

20

25 **MS MURRAY:** Yes.

**MR McAVOY:** If you could proceed, please.

**MS MURRAY:** There's some images that we wanted to share.

30

**MR McAVOY:** They should come up on the screen in a second.

**MS MURRAY:** Within my statement, I wanted to share the story of our fight for land rights over several generations. My family's been involved for the fight for land justice, and it continues today through my father, who's in attendance today and we have been active in the participation of land rights and the movement, going right back to 1881.

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40 And you'll see on this picture here, a picture of my grandfathers, John and Aaron Atkinson, that many of our Yorta Yorta people are connected to that were part of the 1881 Maloga petition where they called for self-determination and land rights via the petition. And throughout their time on Maloga, they were strong men, brilliant stockmen and they created a lot of profitable and productive incentives within the mission of Maloga, and I just wanted to touch on that 1881 Maloga petition with my grandfathers there.

45

The next image is of the 1886 deputation to the Victorian Parliament. Sorry, actually, that's the actual petition that has our grandfather's name and many other men. There were 42 men from Maloga that petitioned to the Governor for land and asking for self-determination, and that is the actual petition that they have all signed that was in  
5 an article that's been handed down to us to our family.

**MR McAVOY:** That petition has been reprinted there in the Sydney Daily Telegraph on 5 July 1881.

10 **MS MURRAY:** Yes.

**MR McAVOY:** That's referred to in your statement. So the wording of the petition was published in the paper.

15 **MS MURRAY:** It was.

**MR McAVOY:** Thank you.

20 **MS MURRAY:** And the Maloga petition requested a grant of land, stating access to food and water, and Maloga had been limited through the destruction of colonisation and exterminated their game. And that was a request that they had put in having a bit of their own land to self-determine and to build their own industry. The next image - I will just refer to my statement just so I can keep track.

25 **MR McAVOY:** Please do.

30 **MS MURRAY:** This is of my grandmother Nora Murray and her daughter Diane on the river. My grandmother was born at Cummeragunja, lived on the Cummeragunja village until the Cummeragunja walk-off when she walked off as a teenager with her family along with a number of residents in 1939 who left Cummeragunja in protest of the way they were treated. So that's a story we know all too well, the Yorta Yorta people, around the Cummeragunja walk-off.

35 Next photo please. This is a photo of our grandfather Walter Newman, along with other men, Barak and Wonga, and a deputation that was part of the fight for Coranderrk. So obviously the Wurundjeri and Woiwurrung are all too familiar - Sue-Anne, it would be your families, and your connection to this image, my grandfather Walter Newman, John Logan was part of the deputation at the time when he was living at Coranderrk. And he was a DJAARA man who came from Central  
40 Victoria and travelled around a bit, but this was his time at Coranderrk which he was part of that deputation that was sent to the Parliament of Victoria.

45 Next photo, please. This one is of my grandfather, Stuart Murray. He was heavily involved in the fight for land rights in Victoria, including as the first Chairperson of the Aboriginal Land Council. This is a photo of him at 17. He had put his age up to go and fight in a war. And he returned to come back and fight another war for his

people. I thought this was of significance, this photo. I wanted to honour his role in that movement and what he had aimed to achieve around land rights and land justice.

5 There is a letter on the next image that he wrote as a Chairperson of the Victorian Aboriginal Land Council in 1988 to the Premier at the time, John Cain, asking and advocating for a treaty between the Wamba Wamba clans of Victoria and the Victorian Government to address land injustice and touched on international treaties that had happened. That is the actual letter. I'm not too sure if there was a response to that letter.

10 The next image is of our grandfather, Pastor Sir Doug Nicholls. He was involved in advocating for First Peoples throughout his whole life, and he participated in the Day of Mourning in particular. But this was an image, I think Aunty Marj Thorpe spoke to it in the fight to save Lake Tyres and the protests. So he was active when the Lake  
15 Tyres men come down to Melbourne and leading those protests across the streets of Melbourne.

The next image is a grandfather along with his uncle, William Cooper and Jack Paton. This was taken at the Day of Mourning in 1938. He had just retired from  
20 football not long before this and joined his uncle William Cooper in Sydney, calling out the treatment that they'd been experiencing through Cummeragunja Mission and other areas of Victoria and New South Wales. And that was him as a younger man when he retired from football, joining the political movement and became more active fighting for our rights.

25 **MR McAVOY:** Now there's another picture that you have referred to. This one here.

**MS MURRAY:** That's my actual father who is in attendance today, and he's inherited that fight from his forefathers and grandfathers and his own father. And  
30 that's been carried down over generations. That's gone right back over seven, eight generations that we have continued the fight for land rights. We still don't have land rights and that is something that - he's inherited that legacy that we all have. All our families have fought hard for land rights, you know, whether it is the Terricks or the Forbes or the Nicholls - who else is here?

35 **MR McAVOY:** The Bergs.

**MS MURRAY:** Fighting Gunditjmarra the Clarks, Austins.

40 **MR McAVOY:** And the Bergs.

**MS MURRAY:** The Bergs, the Booths, I can't see who - everyone's here, the Nelsons. All our families have been instrumental in that fight for land rights and fighting for our human rights. And that's something we have in Victoria having a  
45 long history of activism. It's a culmination of all the fights and struggles that have got us to this point today and where we are in the Treaty space. So I wanted to acknowledge that it has been generational. It is a responsibility we have carried over



time, and we have been fighting for a very long time, so I wanted to acknowledge and pay respect to my father and grandfathers in that statement, so - to show that it has been a long fight for us and we are still fighting. We are going to fight all the way until we get rights in this country, and that we are respected, our dignity, our sovereignty, and our people as the First Peoples of this land. Yes, I just wanted to acknowledge that.

**MR McAVOY:** Thank you. Clearly, it is a matter of great pride for you to be able to refer to your father and ancestors in terms of their contribution to the struggle. You talked about your father's having inherited the struggle, and can the Commissioners assume that that inheritance is also passed to you?

**MS MURRAY:** I think myself and Rueben, and even all of us have a huge responsibility that have carried over from our ancestors, forefathers and mothers. Yes, it is a responsibility I think that we carry today.

**MR McAVOY:** Is it your expectation that that - that inheritance will pass to the next generation and -

**MS MURRAY:** That is what we are preparing our children for, what they will inherit. I hope they don't inherit that trauma we have carried and the pain and suffering of our people and where we are, you know, at this point in time. I think we can prepare our children for what they will inherit, and Treaties will be our future. I really believe in that. I think it will change the way that we go forward in our relationships and how we coexist in this part of the country. It is something that I prepare my child for. She is a Treaty kid. So she comes along to Chamber, participates, takes her little those notes and she is understanding, you know, this is our future, this is where we are going. She knows our stories as well. She knows our stories about our old people, and we teach her that - you know, to instil that culture and have a really strong knowledge base of where she comes from.

**MR McAVOY:** Thank you very much for that. I would just give you the opportunity to make any comment you would like to make, Rueben, in relation to the matters that Ngarra's just spoke about from your own perspective.

**MR BERG:** Yeah, just echo a lot of what Ngarra said about that sense of us, all of us as members of the broader community, not just the Assembly community, building on the legacy of our ancestors before us to come to this place. I do just also want to reflect on something that came across me during the minute's silence, having that massacre map up there, which I think is relevant to the nature of today's conversations. And I was taken back, actually, during that minute's silence to a time when, a great time of celebration, really, that I was down on Country with my family, the - down near the Hopkins River at Blacks Falls and Mount Emu Creek, and I was there with my cousins. We were having a big, you know, fun day in the sun, swimming in the waterhole, you know, coming back to how our people for generations would have been using that same waterhole for that same purpose, for coming and celebrating and just having fun with family. And then whilst I was there,

I was reminded that upstream from that spot was a massacre site, where our people had been massacred, and I was struck for quite some time that I couldn't shake the sense that there were likely parts of our family in that water with us, that were still there. And so it was this celebration, the joy of being on Country, but tinged always  
5 with that sadness of that - those things from the past never leave us, and it was still that sense of, yeah, we were bathing there, still where our ancestors - their blood had been spilt was still in that water.

**MR McAVOY:** Thank you. Commissioners, I propose to move on to some other  
10 parts of Ngarra's statement at this point. Are there any questions that you might have in respect of the evidence that we have just heard?

**COMMISSIONER HUNTER:** Can I just thank Ngarra for telling her story and  
15 although you have probably told it standing in this space, this space of truth-telling and telling that. I just want to honour that, because it's hard - it's a hard thing to do, and you know, particularly when you have got a whole Assembly behind you. It is difficult. I just want to thank you for doing that.

**MR McAVOY:** Thank you, Commissioner. Ngarra, I just wanted to ask you now to  
20 turn to - have you got your statement in front of you?

**MS MURRAY:** Yes, I do.

**MR McAVOY:** If you could turn to paragraph 54. There is an expression in this  
25 statement that you referred to in your opening statement, and that is, in talking about European approach to land management, you say that:

"It's pushed the land to the brink of ruin. In adopting such an approach, the colonisers  
30 have actively shunned our generations of wisdoms and practices. The Dja Dja Wurrung use the term 'upside-down Country' to describe the enormity of impacts colonisation has had on our land from gold mining and land clearing".

Can you just explain for the Commissioners your understanding of what the term  
35 "upside-down Country" is intended to convey.

**MS MURRAY:** Something that DJAARA have implemented the upside down  
40 nature in Country due to the gold rush and land clearing that is happened quite across the tribal territories of the Dja Dja Wurrung. And that's something that, you know, DJAARA will speak to, through the strategy around the plan to turn their Country back into a healthy Country is a really big part of their objectives around rejuvenation around the Country in Central Victoria. That is something they refer to as "upside-down Country". And, yeah, it is something I wanted to touch on out of respect for DJAARA, but they can talk to that in more detail.

**MR McAVOY:** I want to ask you to turn to paragraph 58 of your statement - I'm  
45 sorry, paragraph 59 of your statement, where you talk about people other than First People benefitting from Country, and you spoke about your grandfather not having

received a soldier's settlement allocation after serving in World War I for - after serving in the army in World War I for Australia.

**MS MURRAY:** Yes, so -

5

**MR McAVOY:** Can you explain that a little bit further, please.

**MS MURRAY:** So my grandfather served in the war, and he had made a number of applications when he returned from his service for soldier settlement land in Victoria and New South Wales, and he was after a sheep farm or mixed farming to be able to come back home to Country and to take up a role on his grandfather's land. And he finished third in a ballot at Wagga; that was the closest he got to a soldier's settlement farm. He was married and had kids and all he wanted to do is own a piece of his ancestors' land that was stolen and exploited from his grandfather. And he was unsuccessful in his attempt along with other soldiers. I know people - like Uncle Donnie Lovett has been part of the inquiry and has been really instrumental in that call for compensation for families that, you know, our men - men that went to war and come back home of the - they were poor on their Country and that was not afforded to them as it was to the non-Aboriginal soldiers that fought in the wars.

20

**MR McAVOY:** It sounds, without putting words in your mouth, that you are – that you and your family find that particularly offensive or something that – raises anger for your family and that is another wave of dispossession, in a sense, that land was distributed to other people and not to your family as the real owners of the land.

25

**MS MURRAY:** And I think a lot of Aboriginal families would feel that way.

**MR McAVOY:** And so do you know of other Aboriginal families who have applied for the soldier's settlement outcomes?

30

**MS MURRAY:** I know that there's been that attempt through Uncle Donnie and the family and the Lovetts, they served in the war. I don't want to speak on their behalf but that is something they would have considered.

35

**MR McAVOY:** Is the resolution of that issue something that would go some way to resolving the ongoing disputes between First Peoples in Victoria and the government?

40

**MS MURRAY:** I think that would relieve some of the anger and what we have inherited through the lack of respect that our Aboriginal soldiers had experienced when they returned.

**MR McAVOY:** So at paragraph 61 of your statement, you make the observation that:

45

"While the inheritance of the colonial descendants was stolen wealth, the inheritance of our peoples was the complex overlapping harm of dispossession".

**MS MURRAY:** That's correct.

5 **MR McAVOY:** Now, I just want to take you to another part of your statement where  
- if you can turn to paragraph 62. And at that part of your statement, you put - you  
speak about First People's care for Country and the notion that everybody benefits  
from when First People care for their own Country.

10 **MS MURRAY:** Yes.

**MR McAVOY:** You've just - you've explained it in your statement, but can you just  
expand on that for the Commissioners, please.

15 **MS MURRAY:** I think there's a number of examples when we look at the different  
Traditional Owner groups, what they've got in place around caring for Country and  
the benefits that provides everybody that lives on their lands. I know with the  
Gunditjmara, with Budj Bim and the work that they are doing on their Country is  
quite significant and contributes to, you know, the tourism industry and the  
20 economics of that region, and, you know, everybody benefits from that because it is  
such a significant site. And, you know, everybody in this country should visit that  
area at some stage to look at the significance. It's older than the pyramids. It is  
something of great value, that cultural landscape of the Gunditjmara people. It shows  
when they are caring for Country, looking after Country, they are activating their  
aspirations for Country, that everyone benefits from. That is probably an example I  
25 can talk about, around when First Peoples care for Country everyone benefits, or the  
work that Traditional Owner groups like the Gunaikurnai or the DJAARA are doing  
in relation to climate strategies and fire strategies and renewable energy and things  
that can benefit all people who live on their Countries. That is what they contribute,  
you know, to those regions. There are some really successful initiatives that  
30 Traditional Owner groups have in place, to care for Country and that includes  
everyone who lives on that Country. That is part of our culture and who we are, that  
we look after everyone, we have a responsibility to heal the land and to make sure  
that there is a healthy and balanced Country for everyone that lives on it.

35 **MR McAVOY:** Is there something that you would like to add at that point, Rueben?

**MR BERG:** Yeah, I think often when I talk more broadly to people about the  
benefits of First Peoples having that capacity to care for Country, there is, I think, a  
very simple analogy that would resonate, I would hope, with most people. Anyone  
40 who has ever lived in an old house will know that when you have lived in an old  
house, you come to know how it works. You come to know if you want to get to the  
bathroom late at night without waking everybody you don't step on this floorboard, it  
will creak. If you close a cupboard properly, it doesn't quite close, but if you push it  
here it will close smooth. You know these things, when you have lived in a place for  
45 a long time you get to know how it works and make it function. And so you take that  
idea about a house and living it in it for 50 years, transpose that to an entire  
landscape of people living on it for 60,000 years, that is the type of deep knowledge

we have about places to run more smoothly, just like you can make your old house run more smoothly.

5 **MR McAVOY:** And do you say when the house runs more smoothly, everyone benefits from that?

**MR BERG:** Absolutely. When the house is running smoothly and when Country is running smoothly, everyone can benefit.

10 **MR McAVOY:** We have often heard the expression that when Country is healthy, the people are healthy. Is that something that you also ascribe to?

**MR BERG:** Yeah, absolutely. I think that is very true.

15 **MR McAVOY:** Now, in your statement, you refer to some of the types of damage that have occurred - that occur to Country, and perhaps it being irreparable and the need for First Peoples to be involved in the caring for Country and the rebuilding of Country. When you talk about, sort of, irreparable damage, what sort of effects are you talking about?

20 **MS MURRAY:** Well, an example is around land clearing, the cattle runs that have come through our country over generations now and the impact that that has had on our environment. There is a number of legislations, I understand, that associated with environmental issues, so the extraction and mineral resources, the way that that's  
25 been extracted from our country, and it doesn't prioritise environment or conservation, you know, aspirations. So there's been a lot of damage to Country right across, you know, all of our Traditional Owner groups and, you know, our territories that we are responsible for, and that's something that's, you know, impacted the way that we live on that Country and I think we have such a unique connection to  
30 Country, that we care for our Country, we love this country more than anyone. And, you know, when Country is sick, we feel sick. We have had to stand by and watch our sites be desecrated and our ancestors be dug up. And there's things that have happened to this country that has been quite, you know, catastrophic in how our relationship is with the land. I think there are a lot of examples around Country being  
35 upside down, as DJAARA say. They are working really hard to fix the damage to Country. We care for Country even if it has been destroyed. It's still part of our Country, still part of our tribal territory; our ancestors come from there.

40 **MR McAVOY:** Looking at the upside, when there is a proper role for First Peoples in decision making and the exercise of power, are there any international examples that you can point the Commissioners to where the whole community benefits from that role?

45 **MS MURRAY:** There are, and we've looked at a number of international models right across the globe and talked closely with our connections in Aotearoa with the Maori mob, you know, with (indistinct) might want to speak a bit to that. We've talked with British Columbia and, you know, different indigenous peoples around the

globe who have, you know, more powers and responsibility for affairs that are related to their needs and priorities and what they are trying to do to self-determine and self-govern. So there is a lot of examples that we have considered throughout the Treaty process. Do you want to touch on any?

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**MR BERG:** Yeah, I think, as Ngarra said, there are lots of really powerful examples. In the broad sphere of this Treaty conversation, we have been really mindful to make sure we draw from the international examples both in land management and self-determination in those other places about what the different models are. They are power models to be able to demonstrate to the broader community that you can transfer over responsibility for land management and water management. You can transfer over decision-making powers to First Peoples and the sky doesn't fall in. There are benefits to the broader community when you do those sorts of things.

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15 And I would like to particularly add, in terms of some of the impacts on our environments from my experience in the water space, I have seen some devastating impacts around how we have mismanaged water in this country, and I was fortunate to have a role as a Commissioner for the Victorian Environmental Water Holder, and that sense of upside-down Country equally applies to upside-down waterways. And that - so often across this state what we have seen happen is that our rivers have just been turned into pipes. They are essentially just a mechanism to get water from one place where they have dammed up the river to get it down into some farm in some other place. And so the river is no longer actually having its natural cycles like it would. It in fact runs in reverse. When you think about how a river works, when it's winter and it rains a lot, there are high flows, with fish, the landscape will be familiar with high flows, in summer, it will be dry, the river is going to drop down lower. Because of how the government has been managing the water across decade, centuries, actually the reverse happens. So in winter times, they put in dams to block the rivers so they can collect the water, so in winter times the waters run low when they should be high. And in summer, they want to get the water they've dammed up down to the farms, so it runs high in summer. The river is running in reverse, and it has detrimental effects on the environment causing significant erosion, there's the fact that the rivers aren't actually able to run slowly, it means the fish can't find their habitats appropriately. There are all sorts of things with the water mismanagement that we are slowly - in my time in the work I have been doing, we have been able to bring back some traditional knowledge to do it better. There is a long way to go. And that would benefit all of us to have our rivers running in a much more appropriate way, back to the way they should be running.

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40 **MR McAVOY:** You've mentioned that they're seen as - I think you used the term "water delivery vehicles" rather than rivers, in the sense that they have a whole range of meaning and roles in the health of the country.

**MR BERG:** Yeah, they - oftentimes, these waterway systems are sadly just treated as pipes, open pipes, and it completely disregards the cultural connection, the cultural significance of those places, and denies that from all Victorians being able to appreciate that aspect of our amazing country.

45

**MR McAVOY:** I just might ask whether any of the Commissioners have any questions in relation to the evidence that we have just heard before we move to the next area. No. Thank you. Thank you. Now, I want to ask you some questions now  
5 about the First Peoples' Assembly so that not only the Commissioners can hear it, but other people who are listening to this evidence might understand better the role of the First Peoples' Assembly. There were elections in 2023, and as a result of those elections, you, Ngarra and Rueben, were appointed as Co-Chairs. There have been some observations made about the voting numbers for that election. Is there anything  
10 that you would want to say about the voting numbers at that election?

**MS MURRAY:** Yeah, we have tripled the amount of community members that have registered to enrol in our elections, and we have doubled our voters, so we are really pleased after the last election, so slowly building that collective support throughout  
15 our communities and getting our mob more active and participating in the process.

**MR McAVOY:** Now, the membership of the First Peoples' Assembly, can you just explain how the membership is comprised?

**MS MURRAY:** Yep. So we are 32 democratically elected members of the First Peoples' Assembly. We are quite diverse. We come from five different regions across the north-west and north-east and south-west and south-east and in the metro. And we are an assembly, we are very unique, we are very culturally strong and we are building, you know, our Aboriginal democracy within our membership base, and we  
25 represent all the communities and Traditional Owner groups across Victoria, and we have got 11 reserve seat holders that are the registered Aboriginal parties, and we have got 20-plus members that represent the different regions. So that is the kind of composition of the First Peoples' Assembly, and we have recently just added an additional seat for the Wamba Wamba people.  
30

**MR McAVOY:** Is it the case that it could be said there are any groups that are unrepresented at present?

**MS MURRAY:** Yes, there are groups who aren't officially, you know, members of  
35 the Assembly. That is why we initiated the additional pathways process to enable Traditional Owner groups that aren't recognised formally by the State to take up a seat in the Assembly. So we are really proud of that decision at our last Assembly Chamber meeting where we voted to bring in the Wamba Wamba people to have a rightful seat on the Assembly.  
40

**MR McAVOY:** Is there more work the Assembly needs to do in that regard, or that completes the representation?

**MS MURRAY:** I think there is more work for us to do. We are speaking with  
45 Traditional Owner groups who aren't recognised by the State and how they can, you know, take up the process. Encourage Traditional Owner groups who aren't recognised by the State to contact us and follow it up, because it is important that we

are inclusive of all peoples that live here so we have got a bit of work to do. We have a really strong representation and cultural representation, but we want to build on that. It is not perfect, but we will keep building on that to strengthen the representation.

5

**MR McAVOY:** The intention is to have as many representation as possible?

**MS MURRAY:** I think so, to the best of our ability, to be inclusive of all the Traditional Owner groups. We also represent all the Aboriginal and Torres Strait Islander people that live in the communities. That is something we felt very strongly about throughout the Treaty Commissions process to ensure we leave no one behind and that this is a process we all be part in inclusivity. So that's a really big strength we can bring to the Assembly.

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15 **MR McAVOY:** Is that a cultural responsibility, do you think, to ensure that nobody's left behind?

**MS MURRAY:** Absolutely.

20 **MR McAVOY:** I might just ask, Rueben, if there is anything that you wanted to add at this point?

**MR BERG:** No, just in terms of the actual current membership of the 32, soon to be 33 members. I think if you looked at all the different groups that they identify as, I think you can see all the groups across Victoria are represented in that way. Whilst we want to continue to pursue getting formal recognition for the reserve seats for each of the groups, there is strong inclusion of all groups through the membership of the Assembly as well.

25  
30 **COMMISSIONER HUNTER:** Mr McAvoy, can I just ask, that is a formal process, that if - to come to - to be - sorry, I am not asking it very well. So it is recognised by the government and that is how it started, am I correct, and then was that the Assembly's process to bring - so as the Assembly, you have created that process?

35 **MS MURRAY:** Yes.

**COMMISSIONER HUNTER:** So you include others and you can bring them along?

40 **MS MURRAY:** That pathway is there for other groups, yeah, to apply for a seat on the Assembly, and there is a criteria there as well around how that would happen and we encourage other groups.

**COMMISSIONER HUNTER:** And that's an Assembly process not a government process?

45



**MS MURRAY:** There is no interference from the government. And that's us having the power to determine how we represent and how we govern and that's kind of our business, so we are really pleased, yeah, to be able to have the first group come forward and be part of activating, you know, their rights to a seat, so, yeah, we are  
5 really happy with the outcome.

**MR McAVOY:** Just following on from that point that Commissioner Hunter has raised, it's correct, isn't it, that the Assembly is not a statutory body but it is a company, and that that, if I can put it this way, that gives the control of the  
10 operations of the First Peoples Assembly of Victoria to the Assembly itself. Is that a correct summation?

**MR BERG:** That's correct. So we are recognised as the Aboriginal recognised body under the Treaty legislation. That is the company, the First Peoples' Assembly of  
15 Victoria is the entity recognised as the Aboriginal representative body.

**MR McAVOY:** Now, I just want to take you for a moment to something that was raised in the submissions, and that's in relation to the possibility of statewide agreements. And if you - I'd ask you to indicate, at this point, has there been any  
20 position reached as to who will negotiate statewide agreements in Victoria?

**MR BERG:** Yes, so the process we have undertaken to get to this point was to have an agreement with the State around what is called the Treaty negotiation framework, and that was the role of the Assembly under the Treaty legislation to make sure that  
25 there was this Treaty negotiation framework, and that set out as part of that agreement that, to negotiate statewide Treaty, there would be this representative body. And it is, I guess, the presumptive body is the First Peoples' Assembly of Victoria, but we have to demonstrate certain things and go through a process that's overseen by the Treaty Authority to actually take up that role of negotiating  
30 statewide Treaty. So we are still going through that process at the moment. I would say we are the presumptive body that would negotiate statewide Treaty.

**MR McAVOY:** When can that process be commenced in the sense that the Treaty Authority has been created and there's a statutory arrangement in terms of when  
35 those processes can commence. Can you just inform the Commissioners of when that is?

**MR BERG:** Yes, so there's no fixed timeframe of exactly when it has to happen. It is in the hands of the Treaty Authority. They are still doing their preparatory work to  
40 get set up to establish what is referred to as the negotiations database. And that's the mechanism by which both statewide level, we would put into an application to say we think we are the appropriate body to meet the standards. It is the same database that Traditional Owner groups will be able to use to enter into. That database hasn't been made yet. When the Treaty Authority establishes that database, we are  
45 preparing ourselves to submit our application. And then there is a two-month period of comment for community to say how they think we're faring. If they think our proposal of how we're going to go about doing our business is sufficient. I am sure

we will get good responses from community around that. We can work with that feedback and move forward as the body who will negotiate statewide Treaty.

**MR McAVOY:** Thank you. Any questions on that topic, Commissioners?

5

**COMMISSIONER HUNTER:** Can I ask for the general public that is listening and for the Commission so we have got it, what is the easiest explanation for what is the role of the Treaty Authority?

10 **MR BERG:** I guess the easiest explanation they are the umpire for Treaty negotiations. We know if you are going to sit down and have negotiations with two different parties, there is going to be disputes that come up. It is no good having the person who is going to resolve that dispute being a part of one of those groups that clearly have a conflict. So the Treaty Authority was established as an independent  
15 body who can oversee the negotiations so that if there are disputes they can help facilitate those, they can make decisions on certain things in the process as well. The umpire of negotiations.

**COMMISSIONER HUNTER:** Thank you, thanks.

20

**MR McAVOY:** Thank you. For Commissioner Lovett's benefit, we have just been discussing the role of the First Peoples' Assembly in relation to the negotiation of a statewide Treaty. And if there is - there is any questions you would like to ask, perhaps, Commissioner, we can come back to that topic after morning tea. Now, the  
25 role of the First Peoples' Assembly of Victoria has been set out in the submissions and in previous submissions to this to the Yoorrook Justice Commission. Are you able to in the same way as you have given a very brief summary of the role of the Treaty Authority give a summary of the role of the First Peoples' Assembly?

30 **MR BERG:** Sure, happy to. So it's an evolving role. So the Assembly was first established to be the body that would negotiate with the State on the three elements of the broad Treaty process. So the Treaty negotiation framework, the Treaty Authority and the self-determination fund. It was the role of the Assembly to negotiate those three aspects and now we have seen as a result of that, we are moving  
35 towards this next where it's going to the role of the Assembly to actually negotiate statewide Treaty outcomes. Through that, we have already identified that our aspirations are, as a result of that, we would then aspire to be a body who would then be able to hold powers as a result of statewide Treaty outcomes. We see it in three phases, the first phase about negotiating the process, the second phase is in actually negotiating treaties, and the third phase is actually exercising powers that we hold as  
40 a result of Treaty.

**MR McAVOY:** And as the First Peoples' Assembly of Victoria is a representative body, how important is it that the First Peoples communities in Victoria are brought  
45 along with the process, if you know what I mean?

**MS MURRAY:** It's really important, and that is always in the forefront of our minds, that mobilisation and organising we need to do with our mob. And I think with our election numbers double, tripling which was a fantastic result, to have more collective support to slowly build that consensus that we need across the community.

5 So we have got more and more people involved and active in the process and contributing in many different ways. So it's really important that they're on this journey with us, and I think that with that momentum as we lead up to Treaty negotiations - and we've still got a lot of time to still have those conversations with the mob and what are their kind of priorities and aspirations for statewide treaties.

10 Because there will be many treaties, a hybrid approach a statewide Treaty to cover State matters and the Traditional Owner treaties, and that'll be the business of the Traditional Owner groups, they will have their own aspirations on their own Country, but there will be many treaties to come.

15 **MR McAVOY:** Thank you. So with respect to the possibility of a third phase, and that's the intention to have a third phase, it may be early - too early to discuss what that might look like now, but is that third phase of representation and holding power something that would form part of the statewide Treaty negotiations?

20 **MR BERG:** Yeah, absolutely. That's the intention. That is what working with our community to understand what our - I guess our negotiation brief is going to be. What it is that we want to bring to the table, and those ideas around seeing the Assembly evolve into a body that can actually exercise decision-making powers, can provide critical advice to government, can hold government accountable for its

25 actions, those are the things we're looking at aspiring to as part of those negotiations. But as we know that is going to be part of negotiations with the State. That is where we're establishing our position of what we are aspiring to as a representation of what we have heard from community and where we think the best place to go from an Assembly perspective.

30 **MR McAVOY:** This Commission will be hearing from the Minister for Treaty tomorrow. The First Peoples' Assembly of Victoria's engagement with the Minister and the Department in relation to the types of vision that you have explained to this Commission today, has it been an open and good exchange, or do - is there room for

35 improvement?

**MR BERG:** I would say there is always going to be room for improvement. But from my experience there's been a good positive conversation so far about what our aspirations are, and I am looking forward when we actually start to sit down and

40 have those negotiations.

**MR McAVOY:** Are there any elements of the Treaty process or the First Peoples' Assembly you are able to talk to the Commission about today, bearing in mind the statewide negotiations are yet to occur, as to how you might future-proof the process

45 and the Assembly?

**MR BERG:** We are very mindful of the need to make sure that we can future-proof it. This is, again, one of the learnings we have seen from other countries where they've had treaties and agreements in place, and some of those have been able to endure. We see attempts still today to undermine some of those. This is something  
5 we are very mindful of. And I think from my perspective, very mindful of not putting our eggs into one particular basket. I think it will be a case of thinking of a multitude of different ways that we can make sure that we can have that sense of future-proofing, whether that's through legislation, whether it's through other forms of reform, but also from a cultural sense that we want to see the Assembly as a body  
10 that is not just First Peoples to embrace but that all Victorians embrace and see the benefits of having this democratically elected group of First Peoples. So that - there is this sense that this is something that is a part of Victoria, an enduring part of Victoria. If we can have those conversations, I see great things for the future-proofing of what we're trying to achieve.

15  
**MR McAVOY:** One of the questions that arise in that regard in terms of bringing the whole of the State along with you is the position taken by the opposition following the Voice referendum last year. Is that something that you have hopes will be able to change over time?

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**MS MURRAY:** Yeah, that was disappointing to have the opposition withdraw their support. But our door is always open to discuss Treaty with all sides of politics. That is something that, you know, we will continue to do, to meet with all sides of politics. We have got a government committed and there is law binding us to do  
25 Treaty. We will do that, you know, within this term.

**MR McAVOY:** Anything you would like to add, Rueben?

**MR BERG:** I guess I would add that oftentimes a critical part of the conversation in  
30 the broader community is around the Closing the Gap conversation, and sadly that is often a deficit-based approach. But I think you look at the statistics, and you recognise there is a discrepancy between outcomes of First Peoples and outcomes of the broader community, and I think that all Australians, all Victorians want to see that closed. Like, nobody wants to live in a country where one particular group  
35 of people have a huge discrepancy over another group of people. There are often lots of discussions about how you get to do that. We saw from the Productivity Commission most recently saying that the ways that they're currently working towards Closing the Gap aren't getting the results we need to see, and that the key changes we need to see if we do want to go around Closing the Gap are around  
40 greater decision making powers to First Peoples and greater accountability of government in actually delivering on the things they are supposed to be. They are the very things we are striving towards Treaty. If there are segments of the community that help Closing the Gap going forward, well, Treaty is actually the mechanism to help us close that gap.

45  
**MR McAVOY:** One of the offshoots of that discussion is of course the achievement of some level of funding security for the process. Do you have any insight that you

can give the Commissioners as to the Assembly's view about how funding security might be achieved?

5 **MR BERG:** I think at this stage we are still looking at all the different options that  
 might be possible for us to want to bring to the table. That will be a key part of the  
 negotiations to make sure we are not establishing this future body with a sense it is at  
 the risk of government just being able to cut off the funding then it withers away on  
 the vine. We are mindful of making sure it is part of our negotiations, a fundamental  
 10 part of that will be ensuring there is some security around the funding for such a  
 body. Because without that, it won't be able to succeed.

15 **MR McAVOY:** There is, in the Advancing Treaty for Aboriginal Victorians Act, the  
 creation of a Self-Determination Fund. Can you just explain for the Commissioners  
 what that fund does?

20 **MR BERG:** Yeah, happy to. So the Self-Determination Fund is a really critical part  
 of the Treaty landscape, so to speak, and it is been set up with two key priorities: the  
 first priority is to make sure that Traditional Owner groups who do want to come to  
 the table and negotiate their own treaties actually have the resources to be able to do  
 that properly. Because we know if you go and sit down to try to negotiate and one  
 side of the table has all the resources and you have got barely any, that is not a fair  
 negotiation, so the fund is there overseen by First Peoples. The State has no role to  
 play in how that fund operates. It is completely in the hands of the Assembly and the  
 fund we established.

25 So that primary purpose at the moment is to support Traditional Owner groups to  
 have the resources they need. There is a very broad scope about what that might  
 mean for Traditional Owner groups. So if Traditional Owner groups think they need  
 resources to do research, if they need resources to actually bring community  
 30 together, if they need resources to have conversations with their neighbours, if they  
 need resources to get legal advice, there is broad scope for things that are going to fit  
 within that broad umbrella of getting them Treaty-ready. The long-term purpose, and  
 one that I think I am particularly excited by, in the longer term is to have a pool of  
 resources to enable us to build wealth and prosperity within our communities. And I  
 35 think it's a fundamental reality of how our system works, when you have fund you  
 can generate more, if you have resources, you can leverage that to generate more  
 resources. The sad reality as a result of colonisation, so many of our people are  
 without that base level of resources to be able to build from.

40 So the Self-Determination Fund's second purpose is really going to be an element  
 that enables us to invest in our own communities, to invest in our own people, our  
 own ideas, to generate that wealth to input into the broader economy by doing so.

45 **MR McAVOY:** So is it the case that identifying how the Self-Determination Fund  
 might be put to the governments in support of organisations, in particular First  
 Peoples' Assembly, is part of the funding security, or is it the case that there needs to  
 be some other account that's created for that purpose?

**MR BERG:** I think that's probably an ongoing discussion. I would like to think that the resourcing for a future version of the Assembly is separate from what needs to be done with the fund, because we want to make sure that fund is there to benefit  
5 community and there is a separate stream to actually make sure that the Assembly has longevity in that future-proofing. That is an ongoing part of the discussions we need to have.

**MR McAVOY:** Now, the terms of reference for this Commission of Inquiry include  
10 making of some recommendations with respect to redress. If that redress were to include monetary compensation, do you - is the Assembly's view that the monetary compensation would go into one of those two accounts that we have just discussed, or is that a further account, or is it something that you haven't settled on yet?

**MS MURRAY:** Yeah, I think we haven't settled on it as yet. And obviously that will  
15 be part of our negotiations. No amount of money, and I don't want to tally it up either, can compensate the pain and suffering that our people have felt, but that will be a discussion for negotiations and I'm - it is assured that it will be part of our Treaty negotiations, and the Self-Determination Fund is well-equipped to go into the  
20 future and it is First Peoples-led, so it would be in a good position, as Rueben said, to take on funds and to also build that prosperity and wealth well into the future.

**MR McAVOY:** Is there anything that you would wish to add?

**MR BERG:** Yeah, I guess I would add to that, as Ngarra said, there is no particular  
25 amount of funds that can undo what's happened in the past but I had much rather be future-focused on what can we do to make sure that future generations aren't left behind like the previous generations have been, that we can build that wealth and prosperity for our communities, as that whole process is about that brings benefits to  
30 First Peoples but has flow-on effects for all Victorians.

**MR McAVOY:** I might pause for a moment, Commissioners, to ask if there are any  
35 questions in relation to the material that we've just covered. No. Now, the Treaty Authority has been established, as we have discussed. There have been members appointed to the Treaty Authority. Did the Assembly have a role in - with government in that appointment, or is it a matter for the Minister?

**MR BERG:** It was a really interesting part of the negotiation process around how  
40 that Treaty Authority would be established, and so their independence was really critical. And so there was a slightly convoluted process, but there was a process established for the appointment of those five members, in that a panel was established, and this panel was appointed by both the Assembly and the State. So there was a degree of separation. So the Assembly was able to choose one representative for that panel, the State chose one representative for that panel, then it  
45 was jointly agreed on three other members of that panel. So that five-person panel, they went away and they ran a process to select the Treaty Authority members and

their decision on who they selected, we were required to then endorse that as members of the Treaty Authority.

5 That enabled it to have some level of input on the panel from the Assembly and the State, then they had that role. I think it is an interesting, phased approach that in all the conversations we are having with the State around how we keep moving that dial towards greater self-determination. I don't think it is going to be something that happens just overnight. It's an ongoing process. But that was another positive example of - you could have had it that, yes, it was just the Minister was going to  
10 appoint those Treaty Authority members, that could be a way in other jurisdictions, perhaps that would have been the default. We were able to advocate to have that strong push, that, no, this needs to be moving the dial towards self-determination so that joint selection of a panel and then leaving that panel to entirely have the decision about who that authority was - was a really powerful element and slowly shifting that  
15 dial, transitioning the State to think differently about self-determination.

**MR McAVOY:** Can the Commissioners take it with that discussion about the appointment of the members of the Treaty Authority that the Assembly sees that process as a robust process, that is consistent with the notion of participation in the  
20 business of government in an equal manner?

**MR BERG:** Yeah, I would say so. I think it's definitely a strong way along that path, and it's an evolving process. Often, I have these sorts of conversations with government agencies and government officials. And I think there can sadly  
25 sometimes be a tendency to rest on your laurels, that, you know, oh yeah, we've put in this great plan that talks about self-determination which, as we have seen from some of the work of Yoorrook, that doesn't always mean self-determination. But there can be a tendency for government to think, oh, we've done that, now that's the new standard, now that's what we have to live up to. I'm always of the mindset that  
30 we have to keep shifting that dial. The Treaty Authority appointment was really good, but the next phase, we might move to an even stronger element of self-determination. There might be a time where there are positions within the State that the government might not have a role in deciding.

35 It should be up to First Peoples to appoint First Peoples representatives for various roles. So it's about continuing to make sure government isn't resting on its laurels and pushing the boundaries of what is where we think self-determination should be headed.

40 **MR McAVOY:** Yes, thank you. I just want to ask you now a question about the relationship between statewide treaties and First Nations treaties. Obviously this is still down the track some way, but is it envisaged that the statewide treaties would be binding on the First Nations or First Peoples groups in Victoria?

45 **MS MURRAY:** As I mentioned before, it would be a hybrid approach. So the statewide treaty will cover statewide matters. Obviously, that will affect Traditional Owner groups across their Countries. So there's that connect that we have, having

reserve seat holders, for example, on our assembly to be able to feed into the statewide process. That's all part of our engagement with community as to what they want to see in a statewide Treaty. We are having those conversations with Traditional Owner groups from the different regions. And then the Traditional Owner will do their own treaties, that will be their business. The context of their treaties will be, you know, what they determine at their kind of discretion what they want a treaty on. So there will be many treaties, but there will be things where we will look at removing some of the barriers through the statewide Treaty asks that we will probably help, you know, Traditional Owner groups to achieve aspirations where legislation has failed or, you know, programs and policies on their Countries. They will have their own aspirations around health, education, housing and justice.

So we will look at that at a statewide level when we are talking through the community control sector that cover the health, education, housing and justice thematic areas. There is definitely a connect between that. But the Traditional Owner treaties, that'll be their business how they do their treaties on their Country.

**MR McAVOY:** So you don't see the statewide agreement, statewide treaties, as having necessarily having an effect on the exercise or negotiation of rights by individual First Nations in their own First Nations treaties later on?

**MR BERG:** Yeah, that's correct. As an example, as a hypothetical about some of the scenarios we might be looking at, at a statewide level, it is possible we might bring to the table the idea that, through education, there should be the capacity for Traditional Owner groups to teach their language at schools within their area. Now, that might be an agreement that is reached at a statewide level to apply to all parts of Victoria, but it would be up to the Traditional Owner groups at a local level to decide if they want to exercise their right to have their language taught at schools. So it wouldn't be imposed on Traditional Owners at that level. It would open up possibilities that they could chose to exercise. But at that level between the Traditional Owner groups and the statewide Treaty, there is possibly going to be conversations that need to happen. That is another role of the Treaty Authority is to actually oversee those types of discussions, if there is some complexities about what overlap might look like between statewide treaties and Traditional Owner treaties. That is a role of the Treaty Authority to support that. Neither of those types of treaty is seen in the framework as having priority over one or the other.

**MR McAVOY:** So in that scenario, if a First Nation were not - were put in the position that it wasn't represented by the First Peoples' Assembly of Victoria and, in effect, disowned any statewide agreement, that would be a matter for them and they could go off and negotiate their own treaty if they wanted to, or would the statewide Treaty be binding on them in that sense?

**MR BERG:** So there would be matters that are for negotiation for statewide Treaty that a local group, who might not necessarily agree with that, couldn't necessarily leverage that through their own treaty making. But we would try to address that through our own approach when we reach agreement on treaty making. Regardless



of who is at the table of the 32 or 33 members, we have requirement under the framework to seek collective support of any agreement we reach. Now, that doesn't mean necessarily every First People person in the state is going to agree with the outcome. But we have an obligation to have that process to seek collective support  
5 and try to make sure we are bringing along community. It was through that mechanism that concerns could be raised and understood. That wouldn't necessarily mean they could go and negotiate a separate statewide Treaty outcome, but they'd be free to negotiate at a local level the outcomes that they decide.

10 **MR McAVOY:** Thank you for explaining that. Commissioners, are there any questions in relation to the last series of questions?

**COMMISSIONER HUNTER:** You may not be able to answer this, because you haven't really negotiated it, so we are talking about Traditional Owners, I am just  
15 wondering where the organisations fit in, because that could be the Traditional Owners or it might not be, and so if we are talking about service delivery, in the areas or the regions, are they - would that - sorry, in my head I can understand what I am saying. So if there was an org that had a delivery service, say, on Wurundjeri, on my Country, and Wurundjeri were negotiating, you know, their own treaty, would  
20 they still have the option to negotiate with the service delivery provider, or does the organisation sit at a statewide level? Does that make sense?

**MS MURRAY:** Yes.

25 **MR BERG:** Yeah, that is one of the complexities that we still need to work through. There is a scope under the framework we have established, there is the scope to not just to have the Traditional Owner group or the Assembly and the State; there is the scope to bring additional parties to the table. It could well be that a group says we  
30 want to negotiate treaty to bring this other organisation in to be part of the negotiations. That is on the table. We have been really mindful through this whole process to make it flexible so there is this capacity for different scenarios to play out. But there will be interesting ongoing discussions between local Traditional Owner groups and Aboriginal community-controlled organisations in that space. There is a  
35 requirement through the minimum standards that all parties come to the table have a process to consult with relevant groups within the areas, and so it will all feed into those conversations.

**COMMISSIONER HUNTER:** Great, thank you.

40 **MR McAVOY:** We are scheduled to have morning tea at 11.30, Commissioners. I might just ask one further question of the witnesses before we break. After morning tea, I propose to take you to some recommended findings that are contained in the First Peoples' Assembly of Victoria submissions, but before we go there, is the role  
45 of the Commonwealth in entering agreements such as statewide treaties something that you have considered and have a view about whether it would be beneficial or not to have the Commonwealth present for those negotiations?

**MS MURRAY:** Yep. So the way that the framework is established, the Commonwealth can be an additional party to treaties. So there would be definitely jurisdictions within the Traditional Owner groups that could consider their relationships, because they will have agreements currently with the Commonwealth and with the State, and they will also look at treaties across councils. Like Wurundjeri for example will have a number of councils across your jurisdiction, so there is definitely an opportunity and something we have spoke to the Commonwealth about at some stage, you know, parties will be invited to treaty with the different groups and at a statewide level as well.

**MR McAVOY:** Certainly in the context that there's a significant involvement from the Commonwealth in the Close the Gap funding and the national agreement, it would seem to be important that, for statewide agreements, there be many areas that their involvement might be needed at the table; would you agree with that proposition?

**MS MURRAY:** That is something that we have considered and working with the Ngaweeyan Maar-oo Closing the Gap through Caucus around their current arrangement and what that will look like entering into a Treaty era and the future of treaties at the statewide level and also the Commonwealth level.

**MR McAVOY:** Thank you. If that is a convenient moment, Commissioners, to take the morning tea adjournment. What time should we return?

**COMMISSIONER LOVETT:** How long do you think, 15 minutes, 20?

**MR McAVOY:** Perhaps 20.

**COMMISSIONER LOVETT:** 20 minutes, all right.

**MR McAVOY:** So at 10 to 12, 11.50, thank you.

**COMMISSIONER LOVETT:** Thanks, everyone.

**<THE HEARING ADJOURNED AT 11.31 AM**

**<THE HEARING RESUMED AT 11.52 AM**

**COMMISSIONER LOVETT:** Yoorrook Justice Commission is now resumed.

**MR McAVOY:** Thank you, Commissioners. I now wish to take the witnesses to the submissions to the Yoorrook Justice Commission in relation to land injustice dated 22 December 2023. That document will be in the Commissioners' bundle. On page 33 of that submission, there's a number of findings that the Assembly asks the Yoorrook Justice Commission to find, and I just propose to explore those a little bit. Firstly, summarising the first finding, is it fair to say that that finding, the proposed finding, that issue-specific law reform and systems addressing land injustice is not

enough to address systemic injustices faced by First Peoples. The whole-of-system approach to land justice gives effect to negotiation through the treaty process which addresses matters that include the return of land, redress, public land and water management, commercial use of natural resources and cultural heritage protection. Is it fair to characterise that request as one which places the ownership of land and water and resources at the centre of the need for justice in relation to the Treaty process, or is it not that central?

**MS MURRAY:** Definitely central to the Traditional Owner treaties, and that will be what they will look at and consider around reform in regards to their Country, but we will look at barriers that we can remove around specific law reform, and there's a lot of issues that we hear from Traditional Owners and community, and we shouldn't wait just for Treaty to activate it. It can be done now. And we hear that, you know, from our mob, and we look at different reviews that have been done and reports over the years that have sat on shelves in regards to the Aboriginal Heritage Act, for example. The Heritage Council have done a review which none of those recommendations have been implemented, and that is something that, you know, we can call on to do now.

**MR McAVOY:** There are a number of urgent reforms that have been identified in this submission which I will come to. But in terms of - in terms of the delivery, if I can put it that way, by government of ownership of land, water and resources, it is fair to say that there is much yet still to do? That wouldn't be an understatement, would it?

**MR BERG:** No, I'd definitely agree there is much more to be done, and I'd need to recognise it is a complicated nuanced conversation that will take considered time for us to know what our position is, and hopefully drawing from what Yoorrook is hearing from the broader community that will give a good strong sense of what community's aspirations are in this space, and then that will then feed into what the negotiating position will be. And then that's an added complexity to sit down with the State to negotiate what might be possible. But at the forefront of our mind always need to make sure that wherever possible, there is the capacity of First Peoples to make decisions about First Peoples' matter, whether that is to do with land and water and heritage or the broader areas we are interested in, education, health, all those other factors.

**MR McAVOY:** I will put this to you, that it's possible, perhaps probable, that the existing mechanisms will not deliver enough land for the needs of some groups in Victoria. Would you agree with that?

**MR BERG:** I'd agree with that. I think we have seen the current systems that are in place are not adequate to address the impacts that we're seeing. What the mechanisms might look like to address that, I think that is what we are hoping to hear about this part of this process. There is a fixed idea about what this looks like. But absolutely, business as usual is not going to deliver the necessary changes.

**MR McAVOY:** By "business as usual", in the land space, I suppose, we are talking about the Native Title Act and the Traditional Owner Settlement Act? That's business as usual?

5 **MR BERG:** That is absolutely definitely part of that, yep.

**MR McAVOY:** In the water space, there is very limited capacity for ownership and control of resources; you would agree with that?

10 **MR BERG:** I would agree with that, because that brings in complexities of Commonwealth and State and there is a whole lot of jurisdictional issues there. But that doesn't mean that there's not change that can happen in that space if there is a willingness to do so.

15 **MR McAVOY:** Is it appropriate to say that in terms of public land and water management, that there is much more that needs to be done?

**MR BERG:** Absolutely so. I think we've seen joint management in lots of places as outcomes. I think we need to look at opportunities to look for sole management by  
20 First Peoples of some of these matters. In the water space, I know there's aspirations around that. A lot of times, there is legislative blockers that make that difficult, and I see Treaty as a really powerful opportunity to kind of open up some of those blockages within other pieces of legislation to enable greater capacity for First Peoples to have influence and decision making over land management and water  
25 management in particular.

**MR McAVOY:** And the capacity to have very focused discussions about those things is - you expect that to come through the Treaty process. You haven't been able to have those discussions in the same way in the past; is that a fair observation?  
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**MR BERG:** Yeah, I think the Treaty landscape, the intention of it is to open up a different relationship between the State and First Peoples, whether that is at a statewide level or at a Traditional Owner level, one that recognises the inherent rights of First Peoples as part of that conversation, so I think through that lens, that  
35 will enable greater traction on outcomes that we haven't been able to see previously.

**MR McAVOY:** Have there been particular difficulties with obtaining recognition of the rights of First Peoples to engage in commercial use of resources? Is that something that you hear about or are aware of?  
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**MR BERG:** Yes, particularly in the water space. That's an issue. And we often talk about, in the water space, this concept of cultural flows, and we know that there is significant work being done around environmental water, but environmental water can only be used for particular purposes. Often times the purpose of using that  
45 environmental water aligns with the interests of First Peoples because it is often about making the rivers better, making the wetlands better through the use of water, so there is often strong alignment between that. That can only go so far to the

aspirations of First Peoples around water. And it doesn't enable the use of water for commercial purposes for aquaculture purposes, for those sorts of expanded things. That is definitely an ongoing issue and hopefully will be put on table as part of Treaty to progress that element of cultural flows whereby First Peoples are able to  
5 access water and utilise it, not just to benefit the landscape more broadly, but to actually achieve broader cultural aspirations and economical aspirations.

**MR McAVOY:** The economic component is an important component in the overall package, then?  
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**MR BERG:** Absolutely. I think what we are trying to make sure is that there is opportunity for First Peoples to partake in the economy, an opportunity that's been denied for generations of our people to participate in the same way as other members of the community. That hasn't just been to the detriment of First Peoples; that's been  
15 to the detriment of all Victorians. When you have one segment of the community unable to participate in the economy, that actually is a detriment to everybody. So by enabling, through this process, greater participation and activation of First Peoples in the economy, that brings broader benefits quite clearly to the broader community, especially at a regional level when we can strengthen regional communities through  
20 Traditional Owner groups we have seen already demonstrations of that. That will only be enhanced through Treaty discussions.

**COMMISSIONER LOVETT:** Could I ask both of you, what does water mean for our people?  
25

**MS MURRAY:** From my perspective, you know, water is life. It is a giver of life across our Countries. It's the very veins of our country, through all our Traditional Owner groups through the rivers, the creeks, the waterways, the waterholes, so it means a lot to us, and I think a time - in times that people have played God with our  
30 water, so there is definitely an opportunity. I know the work that the Gunaikurnai do around water rights and activating their rights in that space is, you know, vital to our survival and, you know, to heal our country.

**MR BERG:** I think about Thangang Poonart, the Hopkins Falls, has been such an important cultural and spiritual place for my family across generations, and often  
35 times - it's funny going and visit it - I visit there every time I go down to Fram, you see so many people come to the falls there and - just passive observers of it and stand there and take a few photos then leave. I am always very keen when I am there with my family, we take our shoes off, get in it, being part of the landscape. It is not a  
40 passive thing to observe; it is an inherent part of who we are engaging with those waterways.

**MR McAVOY:** Following on from that question and your previous comments, Rueben, about the cultural heritage legislation reforms, the protection of cultural  
45 heritage in Victoria is an ongoing area of concern for First Peoples, to put it mildly. Is it a matter of particular concern that the reform processes is taking as long as it has?

**MR BERG:** Yeah, absolutely. So I think it has been identified in that cultural heritage space. There are some significant improvements that could be made and would lead to positive benefit. That came from very strong work to engage with  
5 Traditional Owners and the community on what they thought needed to change in that space. And I know that for me personally, as well as being involved in water, I was also involved with the Heritage Council of Victoria. I saw the stark contrast between how a non-Aboriginal cultural heritage was looked after and protected as  
10 distinct from the way Aboriginal culture and heritage was. It was a significant contrast between that. I think that is - it is useful to have a different system and important to have a different system for Aboriginal cultural heritage, but the lack of capacity to elevate some of our cultural heritage to be of statewide significance and treat it with the same care and diligence that the non-Aboriginal cultural heritage gets  
15 treated is a significant gap, I think, in my mind about how Aboriginal cultural heritage is respected and treated within this state.

**MR McAVOY:** Does that go to a much deeper issue about the respect for First Peoples' culture?

**MR BERG:** Yes, absolutely. And I think often times it stems to a lack of imagination, I think, on people's behalves. That in my time working in the heritage space there was often a strong focus on those tangible things that you could see, you know, the very same wallpaper that was there from 1850s, and so that enabled people to say, yes, this is important heritage, whereas when there was an open space that just  
25 contained stories and memories, people didn't have the imagination to say, "This is equally important, I would say far more important than this wallpaper from the 1850s." A lot of times, it is a lack of capacity to step into the shoes of First Peoples to have the connection to stories of these places passed down from generation upon generation still being told today. That's not just an important part of First Peoples  
30 heritage; it should be a part of all Victorians heritage to embrace that. It takes stepping out of that mindset sometimes, and putting people's - putting on that perspective of what might this be from an Aboriginal perspective, and to be able to then really value that in the same way as we do as First Peoples.

**MR McAVOY:** Thank you. The recommended finding number 1 suggests that each of those matters that we have discussed including redress should be dealt with in a whole of system approach. And I am wondering whether it is envisaged that the statewide treaty process will allow the framework for that level of reform. Is that  
40 what's envisaged or a different process?

**MR BERG:** Yes, it is complicated because we have to factor in that there are - some of these rights we are talking about there are related to Traditional Owner rights they might want to be negotiating at a local level as well as have an influence on the statewide Treaty negotiations. What is critical from my perspective around that it is  
45 no good just going, okay, let's just go and focus on land, and when we finish thinking about land, let's go and think about water. When we have finished looking at water, let's go and look at heritage. It needs to be thought of as an entire system how we

approach. It doesn't mean there is one shrugs solution not in isolation, looked at as part of a whole and tackled through that Treaty landscape.

5 **MR McAVOY:** In treating it as a whole, is that consistent with First Peoples' views about managing the landscape and taking a more holistic approach to looking after country?

10 **MS MURRAY:** I think it is and it is all interconnected. That is how we view the Aboriginal cosmos, and that is all connected from land and water and people, so, yeah, I think it aligns to that thinking.

15 **MR McAVOY:** I might ask you just to have a look at the second - the second recommendation from the Assembly to Yoorrook, that mechanisms that shifted decision-making power from government to First Peoples to give to - effect to self-determination in caring for Country should be progressed through the Treaty process. So is it intended that that decision making power, the shift of that decision-making power be dealt with in the same whole of system approach that is referred to in the first finding or is that something that can be dealt with separately?

20 **COMMISSIONER LOVETT:** Before we get to that - sorry to jump in. I wanted to ask a pre-question to that, which is - I'd like you both to answer this, what does Treaty mean to you mob as individuals? And then the secondary question is also about the importance of a shared future, and then we go into the decision-making stuff and so forth. What is the importance of Treaty to you mob?

25 **MS MURRAY:** From my perspective I think Treaty will really heal and empower our people. It is about resetting relationships. We have come from a history of colonisation and injustices and atrocities, and we have come from a part of this country where it is been built on a lie, so I think that Yoorrook has a powerful role in changing the narrative and sharing our stories more broadly across the community here within Victoria. I think that Treaty is all about shifting that power in relation to our affairs and our matters, so we know our community best so it is us that will determine our future and our destiny and how our people live out their livelihoods on their Countries. And I think that is a big shift that we are looking at around that transformational change, that we are seeking through a statewide Treaty negotiation and a body to have that power and decision-making powers and the resources to do that and shifting that out of the State's hands and putting that power and responsibility back into our people's hands, and it will happen on a statewide level, but Traditional Owners will have their aspirations for Treaty, but I truly believe that 40 Treaty is our future. We have come from a history where we have come off the missions and reserves, we have gone through an era of our advocacy and fighting for our rights, through the 70s and 80s, we have come from the community control sector into this space. And everything we have done has prepared us to now shift into a Treaty era and I think that's going to be hard to change those mindsets, but we are 45 literally collecting people one by one to build that support and consensus and a future where we are strong and healthy and balanced on our country, and that everyone in this community thrives, you know, into the future.

And, you know, I can't emphasise enough how we don't have any land. We don't own any land. And the land that we do have is a speck on the map. I can't articulate that enough, what that means to us. And land is integral to the sovereign concept so we  
5 need to have our land back at times where we will then be able to practice our culture and restore our families and community on to our Country and, you know, we have culture and language, we have all these things we have got to get to and we just want to move on with our lives. I think we get so caught up in the trauma and pain and suffering. We are the most traumatised people, but how do we shift that for the future  
10 for our children and our vision around what a Treaty era looks like. It is going to be forever now, because once we start doing treaties, it will be part of our lives. We have got to start thinking like that. It is for the future generations. It is going to take time too because we have got a lot of healing to do. I think Yoorrook will support that healing that we need for our people. And we've got to mobilise our organisation.  
15 We have to form Treaty delegations. Our people have got to come together, despite all our differences and the disputes that legislation has caused, the harm, when you look at Uncle Graham talking about the Yorta Yorta case, and the harm and trauma that we have carried, you know, we have got a lot of work to do around our healing and coming together but I think that Treaty will be that vehicle to get us where we  
20 need to go and we have really got to start to come together and work out our aspirations how we want to build our nations and empower our mob to go ahead and go forward.

So, yeah, that kind of - it's hard, because Treaty means so much to different people  
25 and different perspectives and interpretations of it. But I think if we have all got that vision - and that's the one thing with the Assembly, we are very diverse, very different opinions, but we're all there for the goal of Treaty for our future. That is one thing we all agree on we have found that common ground. It is how we get there now. I think we all have a responsibility and a role to play in getting us there, getting  
30 us over the line in these first negotiations. What about you?

**MR BERG:** Treaty to me means a future where our communities are thriving and our cultures are at the heart of our daily lives. That's what it means to me.

35 **COMMISSIONER LOVETT:** When that can happen, how does that benefit all Victorians and all Australians? Do you want to comment on that?

**MR BERG:** As I have said previously, when our communities are thriving, that  
40 brings benefits to the broader communities, especially in regional settings, to see strong Traditional Owner groups Aboriginal controlled sectors out in the regions, when they are thriving, that brings benefits to those regional communities. When our culture is at the heart of our daily lives, that won't just be at the heart of daily lives for First Peoples, it means it's a centred part for all Victorians, that they can have a sense of pride in connecting to 60,000 years of culture and engaging with that, not as  
45 some "other" as we too often see, but would be able to engage with something they can connect to and have a sense of pride in even though it is inherently something



that still belongs to First Peoples. They can still take pride in that and celebrate that. And that will be, I think, a future that benefits everybody.

**COMMISSIONER LOVETT:** Thank you, Counsel.

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**MR McAVOY:** Just following on from Commissioner Lovett's questions, I might start with you first, Rueben, are we to take it from your answer that you see that there is some healing to be done on the non-First People's side of the equation as well, that treaties might assist in that?

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**MR BERG:** Absolutely. I think if you would just look at Treaty and say, this is something that is just a useful tool for First Peoples, I think that is a misunderstanding of what Treaty is. Treaty is an opportunity to reset the relationship between First Peoples and non-First Peoples here in Victoria, and for them to be able to help reconcile with some of those things that have happened in the past. That is why this Yoorrook process is so critical to enable the broader community to understand what that past is and then, through Treaty, to give a tool to be able to reconcile with that.

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**MR McAVOY:** And, Ngarra, you mentioned the trauma of First People's existence, and you referred to the evidence that the Commissioners heard only two days ago from Uncle Graham Atkinson about the trauma attendant on the Yorta Yorta decision. When people think about trauma to First Peoples, often they think about it as being something that happened in the 19th century, or as something that happened in the past. But is it something that people - is it the case that First Peoples in Victoria are still experiencing trauma from the way the system operates?

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**MS MURRAY:** I think so, and even with Yoorrook and the inquiry around the criminal justice system and child protection system identified that trauma, and the system was broken. As a Yorta Yorta woman, like, the example of the Yorta Yorta case has been detrimental to our people and we are still suffering the consequences of that case, and I think Uncle Graham talked about that. It is in our psyche now, and something that we have carried over generations. And I can't emphasise enough about how much harm that caused our people. I think with all the division that it caused within our tribes, so the historical tensions have carried over generations, so yeah, we still feel the impacts of colonisation today and the systems that have been imposed on us, and we are unravelling a really complex system of legislations and policies, structures and process, and we are trying to decolonise the way that we think. And I think that we're often imposed with these white constructs. Yeah, that case was quite significant to us, and a real kick in the guts.

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So I think our people, our Elders still feel that today and it is cause it adds a lot of disharmony across our community. It is something that is still really raw still after all this time. So yeah, as a Yorta Yorta woman, as I said, it is still something that we are dealing with today.

**MR McAVOY:** Do you see, then, as Treaty as a way in which the continued trauma might come to an end?

5 **MS MURRAY:** Yeah, I think that the Treaty Authority is a good example of that  
and what we were thinking around the establishment of that and removing the  
government out of our space to stop interfering in our business, because we have had  
to settle, you know, native title and, you know, via the TOSA and agreements done  
in the courts, and it is created a lot of litigation right across the state. And that's  
10 something that has affected our people, because they are in the courts, that is how  
they are dealing with it. The Treaty will be that independent umpire culturally how to  
bring people together around the Treaty delegations. They will have to mediate and  
settle some of our disputes. It will be our way, it'll be on our terms, our business, and  
they will have those culturally strong found foundations to come from. Because they  
15 are independent. It is an Aboriginal-led Treaty Authority. I think they will have a big  
role to play in bringing groups together to form their treaty delegations. And I think  
that Treaty, there will be things we will settle through our own business and remove  
the government influence out of the space, because at times it's just been set up to  
divide us, to pit us against each other and it hasn't been constructive or productive for  
our people.

20 So I think that is where we are calling for self-determination or self-government, to  
manage our own affairs. That's all going to be considered and part of our Treaty  
negotiations, and our people will have many aspirations and dreams and hopes that  
they will want to put into this around their future and their thinking around how they  
25 want to coexist.

**MR McAVOY:** You have mentioned with some pride your daughter being a Treaty  
child, Treaty kid. Is there some hope that your daughter's generation, the next  
30 generation, might be protected from the trauma that perhaps your forebears and  
yourself have experienced through the Treaty process?

**MS MURRAY:** Yeah, I hope so, like I don't want to hand down that to my children.  
I think we are all preparing our children, Aboriginal and non-Aboriginal kids, that  
we have in our space with the Treaty work we will do. That is how they know. They  
35 have kind of lived and breathed it in the last few years throughout our term. And I  
hope when they grow up, Treaty is just a given for them and that is going to be part  
of their lives. We are starting to prepare kids around that. I think that's where there is  
a big role for Yoorrook around the public education piece we need to look at and  
what stories we tell our kids, that we will be in a Treaty era that we are in now, and  
40 how we will go forward. I hope that all our kids and families, grandkids, they will all  
be part of it, you know, Aboriginal and non-Aboriginal. It is about all of us coming  
together to work out how we are going to go into the future.

**MR McAVOY:** Rueben, you have referred to your hope that your people will be  
45 thriving, and we understand from that that that would mean not subjected to  
traumatic events delivered by the system that is the dominant system in the state.

**MR BERG:** Yep, absolutely.

**MR McAVOY:** I just wanted to move on to the recommendation number 3 from the submissions on page 33, and that's regarding the redress formula. You've talked  
5 about the Self-Determination Fund, and you've talked about how economic self-determination is important to the exercise of self-determination generally. Is it correct to say that the - I'll withdraw that and put it a different way. Is there any discussion within the Assembly as to the mechanisms by which the State might deal with future redress?  
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**MR BERG:** Not at this stage. That is still an ongoing part of our considerations, and that will form part of what we see as part of our negotiation approach once we consider that from our perspective.

**MR McAVOY:** If the State were to start setting aside funds now into an account to prepare itself for its redress obligations, is that something that would be consistent with the view of the Assembly?  
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**MR BERG:** Yeah, I would say so, if that is a consideration they wanted to make.  
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**MR McAVOY:** Of course, there would be issues in relation to how that fund was controlled and managed and where it sat in the scheme of things, but certainly having money set aside in advance for the Treaty discussions takes some of the difficulty out of the negotiations. Would you agree with that?  
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**MR BERG:** Yeah, I mean, I would say so. As we have said before, the Self-Determination Fund has that broader aspiration around building wealth and prosperity for our communities, and so I would see that aligning with some of those future aspirations, and the capacity to have a fund that is completely controlled by  
30 First Peoples for the purpose of benefiting First Peoples is a strong model to be able to move forward with depending on outcomes of Treaty negotiations.

**MR McAVOY:** From that finding that you have recommended, that the Assembly has recommended at number 3 of the recommendation, it's suggested that there might  
35 be a formula that is created which would then assist in understanding what the future liabilities might be, and is that - have I understood that correctly?

**MR BERG:** Yeah, I think wherever possible in this space, it can be useful, and I think at times Victoria's very strong at saying, "We're at the forefront of this, we are  
40 the leaders in the nation of this and that." And that is many Victorians take great pride in that, but at times, I think it is also beneficial to be able to step back and look at things from a global scale and recognise that these sorts of conversations have already happened in other jurisdictions around the globe and there is no need to necessarily reinvent the wheel from scratch, that if there are applied standards that  
45 have been used in our jurisdictions, it makes the most sense to draw from that and to give greater comfort, I think, to the broader community these aren't outlandish things

that are being considered these are things that sit in a standard way of approaching these sorts of considerations from a global perspective.

5 So it's that balance I think at times of Victorians being very proud of how cutting edge we are, but also realising in some things, there is already a precedent been set, and we can draw on this to give us comfort we are going about things in a considered and appropriate way.

10 **MR McAVOY:** Another way of putting it might be that the bar is fairly low in Australia, to start with.

**MR BERG:** I'd agree.

15 **MS MURRAY:** Agree.

**MR McAVOY:** A couple of the issues that have been identified in relation to the redress formula include the calculation of interest, and we saw that as an important part of some recent High Court litigation in relation to Timber Creek. That is not an unusual part of a redress calculation, and I wouldn't expect that you would see that as being something exceptional? No.

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**MS MURRAY:** With Treaty negotiations, nothing's off the table. This will all be considered in our discussions leading up to negotiations and something that we discussed within the Chamber across our membership.

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**MR McAVOY:** The fifth dot point refers to redress formula not being limited to the colonial constraints of the Native Title Act. That would be the restriction that arises under the Native Title Act for State's liability for past Acts back to 1975 but not beyond. That is what is intended by that particular dot point?

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**MR BERG:** Yeah, I think the overall intention is that as part of this - this process, that Yoorrook looks at all the different mechanisms that might be appropriate, to bring that to the table, so that that is a tool that the Assembly can use as part of its negotiations, so absolutely wanting make sure through this process, Yoorrook is considering the full breadth of what might be possible and what might be the most appropriate measure to move forward with.

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**MR McAVOY:** Do we also take it from that that the Assembly sees the redress formula as taking into account considerations beyond land and water and the things that might be captured by the Native Title Act, so -

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**MS MURRAY:** That would all be considered.

**MR McAVOY:** The last dot point on finding number 3 is that it should be informed by and consistent with the United Nations Declaration on the Rights of Indigenous Peoples, particularly Article 28. And so is that intended to say to the Yoorrook

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Commissioners and the government that there is an international context to the way in which this formula ought to be reached?

**MR BERG:** Absolutely.

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**MR McAVOY:** The final part of the redress formula discussion in this recommended finding refers to building on and strengthening the principles previously recommended by the First Principles Review Committee. Now, I don't want you to discuss any response from the State in relation to the First Principles Review Committee, but there - are you directing the Commissioners, not in a formal sense, but are you asking the Commissioners to look to that - the principles of that review, to assist in making recommendations regarding findings about a redress formula?

10  
15 **MR BERG:** Yes.

**MR McAVOY:** Now, I just want to take you to the fourth recommended finding on that same page in relation to independent oversight of the State in relation to Treaty. Clearly this recommendation is one that of great importance to the process. Has there been any discussion yet or communication to the State as to how that independent oversight might be achieved and what shape it might take?

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25 **MR BERG:** Yes, so there's lots of - lots of different levels around the accountability component. There's the accountability through the actual treaty-making process, and we already have kind of strong measures in place for that accountability through the treaty-making process with the Treaty Authority and just really wanted to highlight the importance within that, the role of the Treaty Authority, and this was something that was a powerful part of the framework that was able to be agreed, was the capacity for the Treaty Authority to work with Traditional Owner groups on what their Aboriginal lore was, the l-o-r-e, they thought should apply as part of their negotiations, and to be able to have that apply, the State needed to consider that and follow along with that lore as part of the process. And that's a strong part of the mechanism for the Treaty negotiation process.

30  
35 I think we would look to build on that concept as we move into the implementation of treaties, to make sure whether it was through the role of the Treaty Authority or other mechanisms to make sure that the State was still accountable on how it delivered on its Treaty commitments. Then more broadly, looking at a role to make sure in the commitments it makes and how it goes about its business, that there is an ongoing process to ensure that there is accountability that First Peoples can have that capacity. Like we have seen powerfully through Yoorrook bringing ministers forward, the Premier forward, and saying, "You've made these commitments, we need to see what you are doing about it." To have that accountability at that level of an assembly construct through the state. There are a multiple of ways that needs to be  
40  
45 a level of accountability that's led and driven by First Peoples with the capacity to bring into that consideration our culture authority and Aboriginal lore within that framework.

**MR McAVOY:** Thank you. So from that answer, the Commissioners can take it you don't see it being entirely the job of the Treaty Authority to police the performance of the government in relation to the Treaty process?

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**MR BERG:** No, not entirely. There is a role for the assembly and the future assembly there is a role for the current Treaty Authority perhaps even an evolved Treaty Authority into the future.

10 **MR McAVOY:** And of course, you are aware of the evidence that was given here yesterday by the Minister for the Environment, Minister Dimopoulos and, indeed the question from Commissioner Walter about there being, I think, 11 frameworks setting out how things would be done but very little in the way of performance itself in the commitments. Where would that type of failure be picked up? Is that  
15 something that you would see happening in the Treaty Authority or is it something that would be picked up somewhere else?

**MR BERG:** I think that is one of those areas that is most likely through an evolved version of the Assembly and whether that is an arm of the Assembly or feature of the members of the Assembly. There is definitely a need for that level of accountability, a capacity for assembly to have - be able to have direct conversations with Cabinet, with ministers, with the Premier, and to be able to say, "Are the commitments you  
20 have made" to make sure there is that level of accountability. If they haven't delivered on to understand why, to identify some of the barriers which might mean we can have that delivered.  
25

I think that is really critical, because I think a lot of times when people are thinking about this Treaty space they might have concerns that there is going to be all this drastic change about a whole variety of things. But oftentimes, all we are really  
30 striving for is the level of commitment the Government has already made, things they promised to do, they actually deliver on those. If we are able to get that baseline, we would all be substantially in a better place already. So a lot of times it is really about putting in mechanisms to make sure the government can deliver on its current promises, and then that will give us a strong base to progress to even greater  
35 aspirations.

**COMMISSIONER WALTER:** Do you have any idea the sort of mechanisms that might hold government to account? We have had the Productivity Commission review that found there was just inertia within State and Federal Governments about  
40 moving from business as usual practice, which has basically meant that all the things that are promised have not been delivered, and I agree looking at all those 10, 11 frameworks yesterday, if they actually were delivering what they said they would promise to deliver, things would be vastly different. So what sort of mechanisms could you move the inertia of government to actually have structural and cultural  
45 change?

**MS MURRAY:** I think that is what we are seeking via the statewide Treaty around that body, an elevated and permanent body, looking at the power and functions and accountability mechanisms we have built in. We have never built this before. This is the first time. It has got to be different. We have seen the failings, we have seen a lot of what has happened through ATSIC and other bodies, but this body has got to be different and it has got to be culturally strong and it is got to include our Aboriginal democracy. How we build that in - it has got to be quite a unique body. That is all the discussions we are having now around the powers, the functions, the resources we will need, accountability mechanisms how we can build that into assembly 3.0, I don't know what we are calling it, a future Assembly. So, yeah, that is that is all the thing we are considering now and the design of it.

**COMMISSIONER WALTER:** I am thinking that is what First Peoples can do and will do. I am thinking more about what should the government do? How should they build a mechanism that holds themselves to account, that gives some sort of mechanism of actually policing their own commitments?

**MR BERG:** Yes, so I think there is a couple of parts of from my perspective. Some elements of those government strategies rather than the government being solely responsible for it there needs to be a transfer of some of the decision-making powers to First Peoples, whether that is statewide to the Traditional Owner groups, whether it's to the Aboriginal community-controlled sector, by transferring some of that responsibility we will see better outcomes. But to my mind, it is as much about that - at the moment we can try to hold the government accountable but we are doing so from outside the room and from, you know, a few steps below, and what I see this Treaty process is about is establishing an agreement between the State and First Peoples that that relationship should be more on an equal footing so we are saying we need to - you need to demonstrate that level of accountability, it is not from outside the room and a few steps below; it is from within the room and on the same level having that conversation.

**COMMISSIONER WALTER:** Is there a role for the Minister for Aboriginal Affairs in this?

**MR BERG:** If I think about my future of what the landscape looks like a lot of the powers of the Minister for First Peoples doesn't sit with the Minister anymore. I am not sure what the future of it is for a Minister of First Peoples. That is in the future. Obviously, there needs to be a role for - within the State to manage that relationship between First Peoples and the broader community.

**MR McAVOY:** Sorry, were there other questions from the Commissioners? This particular issue was one that will vex the Commissioners in preparing their report, because it appears very much to be the case that many commitments are made, many reports are done, and the delivery is often delayed or non-existent. And having some guidance from the First Peoples' Assembly as to its views as to how that accountability or how those accountability mechanisms can be put in place would be of great assistance. Is it possible that in advance of the Treaty negotiations, the

Assembly might be able to make further submissions to this Commission as to what it sees are the possible mechanisms that might be available?

**MR BERG:** Definitely possible, yes.

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**MR McAVOY:** Thank you. The - there are mechanisms that have been mooted in the past which I don't expect you to make any commitment to, but some of the mechanisms which have come to our attention in preparation for these hearings include a body or bodies sitting with the Parliamentary Budget Estimates Committee being able to ask questions of departmental secretaries as to performance. Are those sorts of measures the types of things that are in the broad mix of things that the Assembly is considering?

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**MR BERG:** Yes.

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**MR McAVOY:** Thank you. Now, the final recommendation is one that I have already touched on in relation to ensuring there is a sustainable and ongoing funding to support First Peoples' economic self-determination in relation to land justice, and that should be negotiated through the Treaty process. I am unsure whether you will be in a position to discuss this at the present time, but an ongoing and sustainable mechanism speaks somewhat to continuing arrangement that allows for payment by government into an account to ensure that it happens on a regular basis. Is that what's intended by that particular recommended finding?

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**MR BERG:** Yeah, that's the type of things we want to bring to the table and have as part of the negotiations through the Treaty process.

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**MR McAVOY:** Is that the type of thing you would see being negotiated in the statewide Treaty negotiations?

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**MS MURRAY:** Obviously it would be negotiated in the local treaties, Traditional Owner groups. That would be a priority for them.

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**MR McAVOY:** Now, in the submissions, you've referred to what - I will just pause there. Are there any other questions that the Commissioners have in relation to those recommended findings? No, thank you. I now propose to move on to part eight of the submissions which refers to urgent reforms. And the heading for that part is "*Urgent Reforms Needed Now*". So the first note is consistent with something that we have just discussed in that - on page 34, the request is that the government progress and deliver on those recent reviews and matters that it has already committed to. How important is that to be - is it for that to be done now, and how does that sit with the Assembly's view that things need to be done in a holistic manner? So there is a bit of - there is a bit of tension there between the things that need to be done urgently but ensuring that it is still done in a holistic manner and I'd invite you to make some comment on how that could be done.

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**MS MURRAY:** I think it is finding the balance, because through the recent critical issues report, the government didn't move quick enough and that is something that we heard from community around their response. But there's issues around urgent reform that can happen now. It doesn't have to wait for Treaty.

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**MR McAVOY:** And so one of those issues is the reform of the Aboriginal Heritage Act?

**MR BERG:** Yes.

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**MR McAVOY:** And in terms of any urgency of it, is it a matter that requires, from the Assembly's view, some immediate action from the government?

**MS MURRAY:** Yes, I think so.

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**MR BERG:** I mean, I think some of those recommendations are around making sure that we can move from just a system that only focuses on minimising harm that can actually prevent harm. I think when we are talking about significant places that could be 60,000 years old, I think that if there is an ongoing changes that places of such great significance could just be destroyed, I think there is a need to move urgently, and to raise I think really importantly, broad awareness across the community that oftentimes when we are talking about Aboriginal cultural heritage, it's not just a sense of some desire to stop development just for the sake of it. At oftentimes these are really significant places that are considered to be destroyed as part of these developments, and they are often just referred to in - downplaying the significance of those places so I think there is a greater need to elevate the significance of some of these places that we are talking about, because if there is a risk that by delaying some of these reforms, we are going to see some of our cultural heritage lost. You don't get that back. Once it is gone, it is gone forever. And so I think in that regard there is an importance to make that there is consideration of how we can get this done as soon as possible.

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**MR McAVOY:** And is it the case that there is real hurt for First Peoples in seeing the loss of culture and heritage?

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**MS MURRAY:** Mmm-hmm.

**MR BERG:** Absolutely.

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**COMMISSIONER WALTER:** Can I just ask, the review was done in 2021, what is the State's response to date been of those 24 recommendations?

**MS MURRAY:** I think that would be a question for the Minister tomorrow.

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**COMMISSIONER WALTER:** So it's three years. Has there been a formal response?

**MS MURRAY:** I'm not sure but I think that would be a question for the Minister for First Peoples and Treaty.

**COMMISSIONER LOVETT:** Again, I think I asked this about water before, I  
 5 want to ask the same question. What is the importance of cultural heritage to our  
 people? You sort of started to touch on that, but I think it is really important. Yes, we  
 have a lot of our mob listening in or community listening in, we also have a lot of  
 non-Aboriginal people who are on our journey, they need understanding about our  
 peoples, their expectations and aspirations, also the resistance we are shown. What is  
 10 the importance of cultural heritage to our people?

**MS MURRAY:** It is, like, so important. And I think the mainstream community  
 don't understand the significance of our cultural heritage sites. You know, there's  
 sites all over this country. When I think of our traditional lands even amongst our  
 15 Assembly members from, you know, Gunaikurnai and the Country that they - they  
 care for is quite significant, and the DJAARA, there's many sites within the  
 DJAARA, I now myself (indistinct), like, the sites we have, 400-plus scar trees, all  
 the times we are seeing our scar trees desecrated because they get chopped up for  
 firewood. You know, there's Country in Gunditjmarra Country that is World Heritage  
 20 Listed. There are sites all over this place, it means so much to us. That is where we  
 come from.

We've got burial grounds too. When you look at Kow Swamp and the ancient burial  
 ground there and the significance of these sites. We have had to watch them be  
 25 desecrated. We have had to see over the years our ancestral remains be dug up and  
 desecrated. A lot of examples we have we are still repatriating our ancestors to this  
 day. The cultural heritage significance of this country is something so sacred and so  
 special, that, you know, the wider community need to understand the significance of  
 it, and the thousands of years that come with it, and our custodianship and our care  
 30 for those sites.

As Rueben said, with the Victorian Heritage Register, the Carlton United Brewery  
 facade and the bridge at Hawthorn has more respect and recognition than our ancient  
 burial grounds on our Country or Budj Bim with the aquacultural systems they have  
 35 that are ancient and older than the pyramids. That is something you can talk to the  
 Gunditjmarra about. There is got to be more awareness around that. It is something  
 that we share in our Country, it is something that we bring. I think even in our recent  
 statewide gathering Justice Joe Williams, he come over to speak us with, but he  
 talked about the gift of legitimacy and what we bring to this state. And I don't think  
 40 that is recognised or respected.

As something through Treaty, through our dialogue, I think that is - you know,  
 important for us to highlight around the care that we have for this country, our sacred  
 sites, and that we have had to sit back and watch them be desecrated and, you know,  
 45 have minimal harm through the different Acts, but it is not good enough. I think it is  
 something we can all share around our history and learnings of our sites, and you  
 know, some things are our business, but there is ways that we can bring in, you

know, non-Aboriginal community to share in these significant parts of our Country. So I think there is a lot of good examples that we can share, and of our sites. Everywhere you walk is Aboriginal land, and we have got blood in the ground. That is our connection, that is what makes us so strong, because we have our ancestors  
5 and that connection to Country, and, yeah, I think it should be shared more broadly and right across this country. It is, you know, one of the most diverse and beautiful countries that we have, you know, our land and something that we offer is our 60,000 plus years and the oldest continuous living culture in the world. I think that is something we can all share and celebrate our culture and our languages and - yeah.

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**MR BERG:** Outside in the foyer here are the photographs by my dad, Jim Berg, of the scar trees that he has taken, and the scar tree to me is always such a powerful element of our cultural heritage. And it's not just about the scar itself the tree itself where there has been bark removed to make a canoe, for example, it is what that  
15 represents in the broader sense. And to me it is that - those scar trees represent that deep connection we have to the environment and to the land, because if you think about it, if you wanted a canoe one choice is you could go and chop down a tree and you could make a canoe, but then there is no more tree left. Our ancestors worked out you don't need the whole tree. You can just take off this single sheet of bark,  
20 make a canoe and the tree will still get to live. The scar trees are a powerful reminder of that connection we have to the land and that is why they are such a critical element of our heritage to be protecting.

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**COMMISSIONER LOVETT:** And we've heard evidence in our travels around the state, particularly Ngarra mentioned about repatriation, but we have got our ancestors and secret sacred objects spread throughout the world. Do you want to make any comments about that?

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**MS MURRAY:** I think it all needs to be repatriated. It is hard because we've got provenanced and non-provenanced cultural items, ancestors. There is the stories of the bone collector on the Murray River that dug up our ancestors for a sixpence or a shilling back in those days, and we are still returning those ancestors. There is the story of the Djaara baby we repatriated to the in a museum and researched over a century we had to fight to return that Djaara baby back to the Country and back to  
35 the sacred burial ground. Every one of us across our Assembly would have stories of our ancestors and in museums right across the globe, and in our own museum, so there is a lot of work we need to do to repatriate our ancestors back to Country, and to have those burials that we need to do to put them back in the rightful place.

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**MR McAVOY:** You raise the issue of provenance. In some cases, there is not enough information to know where people have come from, and you would know that, in many cases, very sacred cultural items were taken and the provenance of those items is not known as well. So, does that cause an issue with people not wanting to take things that are not necessarily from their own Country or their own  
45 people?

**MR BERG:** I think that's definitely - it is a complicated space and those are some of the considerations, and there is also the consideration of the capacity for groups to actually look after and protect things that might be repatriated, so - but the overall principle should be, when we know where something comes from and a group wants it returned, it should be returned.

**MR McAVOY:** Just going back to the review of the Aboriginal Heritage Act the recommendations that's noted on page 35 of your submissions, the recommendations made by the Aboriginal Heritage Council sought to align the Aboriginal Heritage Act with the United Nations Declaration on the Rights of Indigenous Peoples and embed principles of free, prior and informed consent. If those principles were embedded, how far would that go to the sort of protection that is needed to ensure that these items are properly protected, or places?

**MR BERG:** Yeah I think absolutely would be a powerful step forward. And a key part of that is the self-determination aspect of it. It is the independence of that Heritage Council to be able to be not necessarily under the banner of government, but to be able to be an authority that can exercise the rights of First Peoples through that lens.

**MR McAVOY:** You have also mentioned in the submission the first principles review of the Traditional Owner Settlement Act. That's a matter of which some questions will be asked of the Minister when she gives evidence tomorrow. But it was initiated in 2020, and that's a matter about which, from the submission, it appears that the Assembly says there should be urgent reform flowing from that review. Is that correct?

**MR BERG:** That's correct, and with all of these, though, as Ngarra said, there was that important balance to be met. But I am always mindful that the government is a significant beast of an entity, and I fully expect that one - some parts of government can do one thing while another part of government is doing another. And whilst we are mindful from a Treaty perspective, we are looking at ways that questions have systemic reform to address, so some of these things - so some elements of these reviews are rightly set aside for Treaty, there are some aspects that don't need to have that delay, and likewise for the Heritage Act and the first principles review. There should be the capacity for the government to chew gum and walk at the same time.

**MR McAVOY:** Similarly, the Public Land Act review process has been underway since 2021; you referred to that in the submission as well at page 35. And that hasn't come to a conclusion yet either; that's correct?

**MS MURRAY:** That's correct, and the current status is unknown.

**MR McAVOY:** Current status is unknown. And then at page 36 at chapter 8.2 of the submission, there's a reference to implementing existing policies and strategies, and some of the policies and strategies are set out in that - in those paragraphs. Is there anything you can say about the government's performance in that regard?

**MR BERG:** I'd say that, broadly, as I mentioned before, oftentimes Victoria is on the front of some of these things, so there are some very powerful aspects of those existing policies and strategies, and it is about making sure that is not seen as the  
5 benchmark, or that's acceptable enough approach, that we want to make sure that we can build and strengthen on those things, and that is possible through the Treaty approach. But that doesn't, again, as I say, prohibit the government in its breadth of being able to address some aspects of that immediately, bearing in mind some aspects of that systemic change need to fall under the Treaty landscape.

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**MR McAVOY:** So in particular, you have referred to the Department of Environment, Land, Water and Planning document, "*Water is Life: Traditional Owner Access to Water Roadmap 2022*", the "*Victorian Aboriginal and Local Government Strategy*" and the Pupangarli Marnmarnepu "*Owning Our Future Aboriginal Self-determination Reform Strategy 2020 to 2025*". They are some particular strategies that you've identified. And do I take it from your answer to the  
15 previous question that there are elements of those that can - that you see as necessary for urgent implementation but some parts that can be or should be dealt with under the Treaty processes?

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**MR BERG:** I guess from my perspective personally, it's more the case that oftentimes these strategies go as far as they can within the current systems. And so within those systems they are pushing the boundaries, but they come up against, at a certain level, a barrier, and so whilst those barriers are there, the government should  
25 be implementing those in full, but we can use the Treaty negotiations to try and remove some of those barriers that might be prohibiting some of those initiatives achieving the stronger outcomes they could be achieving.

**MR McAVOY:** At 8.3 of the urgent reforms section, you refer to:

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"Ensuring that the current laws, policies, regulations and agreements meet the minimum standards of the United Nations Declaration on the Rights of Indigenous Peoples".

35 So the Assembly's position is that, as we understand from this submission, that those minimum standards are not met and - in all cases by the laws and policies, regulations and agreements in place. Is that correct? How close do you think the - do you think that there is any consistency with the recommendation - the articles of the United Nations Declaration on the Rights of Indigenous Peoples?

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**MR BERG:** I'd say to a degree there is, but I think, as we mentioned there, it could be definitely strengthened. This is another one of those examples where there should be comfort for the broader community to recognise that we are looking at these international standards about how we go about doing things. This is not Victoria  
45 going out on a limb doing something quite radical; this is Victoria lining up with international recognised standards about the rights of indigenous peoples.

**MR McAVOY:** Is there a position that the Assembly takes as to whether that should be a legislated requirement in Victoria, that there is legislation embedding the United Nations Declaration on the Rights of Indigenous People into State law or adopting it?

5 **MR BERG:** I think that is still something that is part of our considerations. To my mind it is less about the broader philosophies, it is putting it into practice through what Treaty can achieve, so I think at times there can be a tendency to just fall back on to the principles under UN Declaration on the Rights of Indigenous Peoples, but there is a capacity to actually activate it rather than defer to the principles personally.  
10 And that's what I'm personally much more interested in seeing activated through Treaty.

**MR McAVOY:** Do you wish to add anything, Ngarra?

15 **MS MURRAY:** Yeah, it should be applied to all aspects of our approaches. And that's what we talked about in the framework embedding UNDRIP into the framework. And the State will also have requirements to apply to the Treaty Authority around minimum standards, so you would think that would be considered from a Treaty Authority perspective. But, yeah, absolutely think it should be applied  
20 to their approaches.

**MR McAVOY:** Thank you. The fourth matter at paragraph 8.2 -

25 **COMMISSIONER NORTH:** Mr McAvoy, can I ask a question before you move on to that. Going back to 8.2, the existing policies and strategies, this is an issue, I think, both for Yoorrook and ultimately for Treaty. The government has expressed very supportive strategies, principles, frameworks, guidelines, but the history of implementation is very sadly lacking or extremely slow. I mean, there are - there are some examples there, but we know of others, principles review, and one of the things  
30 that we and you will need to grapple with is why that is the case. Why, in a well-intentioned government whose expressed supportive principles and frameworks, et cetera, has there not been the delivery? And I'd be really assisted if you were able to inject some ideas as to why there is. Obviously, we will investigate this with government itself, but you have often had wide experience in dealing with  
35 government and maybe have some light to shine on it, because it is from a knowledge basis that you would move ahead in negotiations. And from our point of view, from evidence that we hear, we would move ahead to make recommendations to overcome those barriers.

40 **MR BERG:** I am happy to chime in with some initial thoughts on it. One is that I think oftentimes there is this kind of inertia that can set in within government. Things are moving and done a certain way and business is undertaken in a certain way, and it can be challenging within such a beat of government to kind of shift that mindset, that approach. So often we will see that at the minister level, the secretary level, there  
45 is a strong willingness and a commitment when it gets down to the actual public servants on the day to day, that is where you can come up with some of the difficulties in changing that mindset and breaking away from, "This is how we

always do stuff so surely we keep doing it the way we have always done it." Another aspect of it, there are lots, two come to mind now, a lot of times these initiatives are putting huge burdens on Traditional Owner groups to engage with it to actually see results. And these Traditional Owner groups aren't actually resourced to be able to

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provide the requirements of that. So if we can move to a place where Traditional Owner groups, through Treaty, are much better resourced and have the capacity to engage with the State on these sorts of things then we can see some great progress as well. Oftentimes, as I said, there is a huge impost put on Traditional Owner groups around what the obligations are, but without the resources to back it up.

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**COMMISSIONER NORTH:** Do you have an example of that that springs to mind? I've got plenty of examples for your point number one. But this impost on TOs, is that something where you can give some illustration?

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**MR BERG:** Yeah, of the top of my head, just one example from the kind of water space. There was a keenness through Water is Life to obviously engage Traditional Owners more strongly in planning for environmental water activities. So that is part of the policy, but you actually need to have dedicated staff and resources within a Traditional Owner group to be able to actually come to the table. And there was

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often a keenness for groups to want to be involved in planning for the delivery of environmental water, but they just didn't have the capacity to be part of those conversations, as an example.

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**COMMISSIONER NORTH:** I seem to recall that the strategy included resourcing TOs. That didn't happen?

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**MR BERG:** Oftentimes it is not sufficient for the needs, and there is a sense of - I think part of it is there's this - often this idea that one person can represent the view of a Traditional Owner group, and that's often the failing, is that if we as a community want to actually make a decision about environmental watering it is not going to be one person's job to decide how that happens. It takes bringing the community together. It takes a common understanding. It takes a lot of work. It is not you have got one resource they should be able to decide. I think that is some of the limitations of it from my perspective.

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**COMMISSIONER NORTH:** Sorry, going back to point number 1, the inertia point, how - I mean, we can make a recommendation that there be no inertia, and you can have a Treaty discussion abolish inertia, but how do you do that? I mean, this is the sort of an internal public service malaise, if you like, and it probably doesn't only effect these types of Indigenous issues. I mean, how do we do something that is meaningful about overcoming that one?

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**MR BERG:** That's a far tougher question, but I can give you some of my insights, for what it is worth, in that space. I think it takes the leadership to be really strong about this within government. To not just give it a cursory idea, that "Yeah, this is a good idea, but we're not going to talk about it much." It takes that commitment to reiterate and express why this is important. It takes the public servants to actually not

just do it because they are told to do it, but to really understand why this is happening. And that broader awareness which I think can stem from the work Yoorrook is doing why it is important to do this, so that can help overcome some of that inertia. But there's not a secret weapon that will unleash all of that, that's a much  
5 broader problem. Some of those things could assist in that.

**MS MURRAY:** I think we're unravelling all of those existing policies, there are so many arms of government when you power map it, so I think there's some consolidation that needs to happen as well. That's something that we are considering,  
10 yeah, through our work with Treaty.

**COMMISSIONER LOVETT:** I think one of the challenges we are also facing in the criminal justice and child protection system, we asked every minister and bureaucrat about how much power and resource they transferred over, and none was  
15 identified. But where one minister came forward and tried to articulate where it happened, it was really transferring a broken colonial system to our people to implement.

**MS MURRAY:** And that's what we don't want to inherit. When we talk about a  
20 future Assembly or mirror a whitefella system or Parliament either, so that's things that we are considering as well.

**COMMISSIONER LOVETT:** Yes. I mean because I think – and we had the Minister for Environment yesterday who was articulating where the Department felt  
25 that self-determination was enacted was really about collective inclusion, rather than adhering to or empowering collective rights. Yes, a lot of joint management and so forth, but not so much in the context to implementing and recognising and upholding collective rights that our people hold. It is very much, "We will include you and will fund you to do some cultural fire work, but it is not actually about transferring power  
30 and resources." In - I guess, as to the effect of what you are actually talking about. Yes.

**COMMISSIONER WALTER:** I think something else that came out with all the ministers we talked to, with all of these, there are hundreds of these strategies and  
35 frameworks is that there is no line of sight of responsibility. The Minister here yesterday said that he didn't and he was going to look to do that, but he isn't alone, that there is no line of sight, and these just proliferate and there is nobody - no heads roll when this fails. Like, you have got here the '20 to '25 Owing Our Future. What is going to happen in 2025 when that isn't delivered? Will there be any  
40 consequences? It seems not.

**COMMISSIONER NORTH:** Yes, that inertia concept is - we've done the strategy framework principles and that is the job.

45 **MR BERG:** Mmm-hmm.



**MR McAVOY:** Commissioner Hunter? I just wish to explore that a little bit further with you, that issue of inertia. And by inertia, in the sense that the Commissioners have used it, I understand them to be saying that government likes to do things in the way that it's always done them, and the way in which government has always done business as far as it affects First Peoples is that they have done it to First Peoples or on behalf of First Peoples and not as partners or at the direction of First Peoples. That is your understanding of the discussion around inertia?

**MR BERG:** Yes, that's correct.

**MR McAVOY:** But I suggest to you that whilst there is - I think that the evidence discloses that there is a degree of inertia, that it is not entirely benign in the sense that it is just government being itself, but that the evidence that we heard yesterday, for instance, about government actively arranging its business so as to avoid paying money to First Peoples, indicates that there are other forces at work. Would you accept that that - that was the case in the evidence yesterday. Is it your view that that may still be the case today in 2024, that there are agents within government who see it as their role to deny First Peoples the access to the levers of power?

**MR BERG:** It may well be, yes.

**MR McAVOY:** And how do you deal with that? How does government deal with that? How - do you have any suggestions for the Commissioners as to what the Minister for Treaty might do about it, or the Premier might do about that?

**MS MURRAY:** They are some important questions for the Minister tomorrow, and we understand the power imbalance. I think yesterday the Minister spoke to that example where the system is designed against us and stacked up against us. And that's all part of the conversations we are having now around the power imbalance and how we shift that and the dynamic and the behaviours. So that will all be part of our you know negotiations when we get there, and I think the beauty is that we have a Treaty Authority and we have 32 members in the assembly that are going to take up that fight and make them accountable, and we will get to that when we get to negotiations.

**MR McAVOY:** Is there anything you would wish to add on that point? Thank you, Rueben. They are the questions I propose to ask today, Commissioners. I had indicated to Rueben Berg that he would have an opportunity just to make some closing remarks and, unless there are other questions from the Commissioners, I would invite him to do that now.

**COMMISSIONER HUNTER:** Just - we're talking about land injustice here. There was a good point made yesterday when the Yorta Yorta case happened and not taking into account the "*Bringing Them Home Report*" and that the removal of people from Country and - so when we talk about that, then we talk about the frameworks and policies and then you talk about what needs to happen now, can I just ask, and you can answer it or not, your response to the child protection and

criminal justice recommendations of the harms happening to people today. What would you say to the government in response to those harms, children being removed, people going into custody? What would you say to them in the balance of that, not with our current recommendations? Would you say there's things they can do now?

**MR BERG:** Absolutely, and I think it is incumbent upon the government to have heard that so many of our people came forward to be part of that process and share their stories, which are often quite traumatic stories, as a part of that and it is really critical to make sure that the recommendations that came out of that are not just seen as support in principle, but they are seen as actually to be enacted, and that is something, like Ngarra has been talking about, we intend to hold the government accountable in making sure they do do that. As I said before, it is to do so not from outside the room and a few rungs lower, but inside the room and on an equal footing to have that accountability.

**COMMISSIONER LOVETT:** At the statewide Treaty gathering a couple of weeks ago, there were some strong questions and aspirations from community about ongoing truth-telling so you are well aware of our mandate and our terms of reference and our time frames we are working with to deliver a report by June next year. Do you have any thoughts and suggestions in relation to what does ongoing truth-telling look like beyond the mandate of Yoorrook?

**MS MURRAY:** I definitely think there is a legacy piece, and we hear that from community about what it's going to look like after the report is finalised. We get a lot of suggestions and ideas around a truth institute, a museum that holds our truth-telling and our stories. Archives. We get a lot of ideas from the mob around what it will look like, so I definitely think there is a legacy piece there that will carry over because people are going to keep coming forward to tell their truths, and it's got to be ongoing. Yeah, I think we will consider all of that and wait for the report as well around that.

**MR McAVOY:** Rueben, are you able to make some closing remarks on your and Ngarra's behalf?

**MR BERG:** Yeah, absolutely. I think on behalf of myself and Ngarra and the other Assembly members who are here and those who are not here as well, and on behalf of the Assembly team, it has been a really powerful process to be able to be involved in. And I know for myself personally, it's been overwhelming to be part of such - such a process. And to be able to sit in this space with majority of First Peoples around this table, knowing that this is a process that we initiated as First Peoples, it is being led by First Peoples, it is a really powerful testament to the work that we all are doing. And I think it is just - yeah, really want to reach out to all members of our community who have participated in this process and will hopefully continue to participate in this process, and to know there are these systems in place to make sure that the stories people are coming and sharing are being heard, that there's systems in place to make sure we will see systemic reform to address these issues that have been

raised, and that the Assembly is here as the representative of First Peoples to hold the government to account on those things. I really wanted to reiterate the amazing work of Yoorrook has been doing, to get us to be able to tell these stories, and to really open up an invitation to the broader Victorian community to really have the courage and the strength to really embrace what Yoorrook is doing, and to delve into and unpack the stories that are being told because it is really important that the broader Victorian community understand the truths of what has happened to First Peoples across decades and centuries, and to recognise that these things are still having a lasting impact on First Peoples, but to recognise that there is a path forward, that there is a path forward through Treaty, and that will lead us to that Treaty future that I aspire to, which is where our communities are thriving and our culture is at the heart of our daily lives. Thank you.

**MR McAVOY:** Thank you. We might adjourn at this point and the witnesses be excused, and we will return at 2 pm?

**COMMISSIONER LOVETT:** Yes, 2 pm.

**MR McAVOY:** Thank you.

**COMMISSIONER LOVETT:** Thanks very much for coming in today. Thank you very much. Thank you.

**<THE HEARING ADJOURNED AT 1.17 PM.**

**<THE HEARING RESUMED AT 2.04 PM**

**COMMISSIONER LOVETT:** The sitting of the Yoorrook Justice Commission is now resumed. Thank you, Counsel.

**MR GOODWIN:** Thank you, Commissioners. We now have Paul Paton, the CEO of the Federation of Victorian Traditional Owner Corporations, here to give evidence. Paul, could you please introduce yourself in whatever way you would like to culturally to the Commissioners.

**MR PATON:** (Speaks Gunai language) My language, Gunai language, I said, "How are you? It is nice to see you today. My name is Paul Paton. I am well; the country is sick. I belong to the Gunai, I belong to the Monaro, I belong to the Gunditjmarra. I respect Wurundjeri Woiwurrung Country and also their Elders. I respect my old people, my Elders. I respect all people and belonging to Country. I thank you for the opportunity to be here today." As a Gunai man, I want to pay respects particularly to my Elders, and particularly my grandparents, both Albert Mullet and Rachel Mullet-Walter, who provided me with significant guidance in my life journey to be able to advocate for our rights and to be able to maintain a connection to my family, to my Country, to my people. And also want to acknowledge my mother, Doris Paton, who, despite significant adversity, has enabled me to maintain that connection and continues to influence me every day. Thank you.

**COMMISSIONER LOVETT:** Welcome.

5 **COMMISSIONER HUNTER:** Thank you for sharing your language. This is very important in this space. Sorry, your mic's not on.

**MR GOODWIN:** You're the boss. Paul, do you undertake to tell the truth to this Commission today?

10 **MR PATON:** Yes, I do.

**MR GOODWIN:** I understand you wish to read a short opening statement and I invite you to do so now.

15 **MR PATON:** Land is life, land gives life, and land sustains life. Land is us and we are land. Land is central to what we call Country. Country is the land and the waters and the skies and their many resources. Country is part of us and we are part of it. Country is our family, Country is our culture, our language, our customs and spiritual beliefs. Our traditional knowledge and teachings. Country is the plants and the  
20 animals, the birds and the fish and everything that makes up the intricate ecosystems that connect and sustain us every day. Country is a living entity with memory and consciousness. Our connection to country flows from the past and influences the future. Our connection to Country gives us our identity, the Country is us, and we are Country.

25 Stealing our land was at the very heart of colonisation, resulting in the violent separation of our people from the Country, the very land that gave us and sustained us for millennia, Perpetuated through the falsehood of terra nullius, since - this has had devastating consequences that are still experienced today. Our people were  
30 massacred, removed from Country, forbidden to practise culture, and every attempt to make - was made to destroy families and their identity. This is all well documented in the historical records. It was an attempt to destroy our oldest living culture in the world and replace it with systems and institutions that have inflicted ongoing damage to Country that in turn has damaged our people, our culture and our  
35 spirit.

Colonisation and the theft of land also deprived our people of their material livelihood, setting the stage for economic deprivation and continuing poverty in a community where many of our values were rejected and our skills in limited demand.  
40 Colonisation and the dispossession of land and natural resources is not only in the past. This is not purely an historic legacy underpinning dispossession and socioeconomic disadvantage. There are active forms of dispossession that are continuing to be systematically applied by the State of Victoria through public land management and administration. Contemporary acts of colonisation continue to  
45 entrench dispossession and reinforce the advantage and privileges of the dominant settler culture.

Any recommendations to address land justice in Victoria need to be underpinned by and consistent with the obligations under the United Nations Declarations on the Rights of Indigenous People. This is grounded in the core principle of self-determination and requires access to and partnership in decision-making processes around land and resource management. Aboriginal self-determination cannot be achieved without economic development and a level of economic independence supported by a strong Aboriginal economy. Traditional Owner access to and authority over, caring for and healing Country and its resources is considered central to maintaining connection to Country and the maintenance and practice of culture, including the management and protection of our cultural heritage.

The cultural landscape strategy, which we will discuss today, the first of its kind in Australia, sets out a framework to systematically enable Victorian Traditional Owners to lead planning and activate cultural knowledges and practices to manage country. The framework enables Traditional Owners to use Indigenous knowledge to protect, manage and heal cultural landscapes in partnership with government and private landowners. The framework includes bridging tools that bridge the two knowledge systems, Indigenous and Western scientific, to lead to changes required for Traditional Owner planning, management and governance of cultural landscapes.

Land justice is not only a mechanism to acknowledge historical injustice but also a contemporary issue critical to the journey of self-determination. Land justice can only be built by agreement. The State must work proactively with Traditional Owners to ensure a just and durable agreement to ensure the long-term existence of Traditional Owner groups as a distinct cultural, social and political entity within the broader Australian community. Thank you.

**MR GOODWIN:** Thank you, Paul. I understand you are the CEO of the Federation of Victorian Traditional Owners Corporations?

**MR PATON:** That's correct.

**MR GOODWIN:** And how long have you been in that role?

**MR PATON:** I have been in that role since April 2020.

**MR GOODWIN:** What's been your professional career prior to that role?

**MR PATON:** Other than that role, I spent two and a-half years at DELWP, the Department of Land, Water and Planning, as managing engagement. Prior to that, I spent 14 years as executive officer of the Victorian Aboriginal Corporation for Languages, supporting communities in the revival of their languages across Victoria.

**MR GOODWIN:** And can you briefly explain to the Commissioners what the role and work of the Federation is.

**MR PATON:** The role of the Federation is an advocacy body and a convenor and facilitator for Traditional Owners to advocate for their rights and interests to reform legislation and policy, to enable self-determination, to embed recognition in government policy, and to build capacity for Traditional Owners to be - towards  
5 economic independence and a strong nation identities as a collective group.

**MR GOODWIN:** And a number of your members, if I can put it this way, the number of the Traditional Owner corporations, would be registered Aboriginal parties under the Aboriginal Heritage Act; is that right?  
10

**MR PATON:** That's correct, all of our members, all six of our members are registered Aboriginal parties.

**MR GOODWIN:** And would some of those also be Traditional Owner entities under the Traditional Owner Settlement Act?  
15

**MR PATON:** Yes, several of those are, such as DJAARA, GLaWAC, Taungurung, and soon to be Eastern Maar, so a few of our members are Traditional Owner group entities.  
20

**MR GOODWIN:** And GLaWAC, you mentioned GLaWAC. That would be prescribed body corporate under the Native Title Act as well?

**MR PATON:** That's correct.  
25

**MR GOODWIN:** So the Federation has prepared a submission regarding the Commission's Land Injustice Inquiry that suggests a number of recommendations which should be implemented by the State. If I can just go to page 13 of that submission, and in particular, if we can highlight the third to fifth paragraphs, the submission states that:  
30

"In achieving land justice for First Peoples, this deep connection, being the connection between First Peoples and country, must be genuinely recognised and firmly understood as underpinning all aspects of First Peoples' existence".  
35

Do you think that that deep connection is widely understood in Victoria?

**MR PATON:** I think that widely understood through the broader community is probably not understood to the level that is required for us to come together as a - as  
40 a country, as a community and to be able to build a future together requires a deep level of understanding about our - our true history and - and referring back to my statement around the false pretence of terra nullius, which has been passed on through generations throughout this country, has - has become the - the status quo or  
45 the - the understanding of this country about our history, and therefore we have a huge role through the Truth and Justice Commission, through Treaty, through our education systems to be able to ensure that our true history is told, so that - so that we can walk together for a shared positive future.

**MR GOODWIN:** And the submission goes on to state that:

5 "The importance of land to Aboriginal Victorians is rooted in the core principle of self-determination, and that the deep connection between First Peoples and Country must be genuinely recognised and firmly understood, and that self-determination requires access to and partnership in decision-making processes around land use and resource management".

10 Why is that important to self-determination for Traditional Owners?

**MR PATON:** Having rights over Country provides us the ability to exercise our obligations as Aboriginal people, as Traditional Owners, to manage Country, and that is something that needs to be enabled through the activation of propriety rights, 15 to be able to manage Country, and current systems and land tenures don't enable us to fully apply our - our obligations to care for Country. So we need to move to a new - a new land tenure position to be able to enable that practice of rights and obligations, because it connects us to our - our culture, our story, and to be able to - not to be able to practice those obligations on Country causes us trauma, because of 20 that inability to access Country to fulfil our obligations. And - and we need to be able to self-determine what that looks like, and we need to remove the barriers to allow us to practice our culture on Country and for that to be designed in a self-determining way.

25 **MR GOODWIN:** What are some of those major barriers, in your view, to access to land and resources?

**MR PATON:** I think probably the most significant barrier to access to land is a lot of - I guess, a significant proportion of the State native title has been extinguished, 30 therefore there are no native title rights to be able to access land; it's now freehold title. And public land that still exists is only in small patches, if I - if I could describe it that way. There are some parts of the state that there are large patches of public land or, you know, areas that are public land. However, those areas of land still are sort of - those - those areas of land are still under Western management regimes. 35 Therefore, those opportunities are very limited to be able to fully exercise self-determination and cultural practices on Country.

So that is where I come back to my - my previous point, which is around options for 40 future land tenure that allows Traditional Owners to actively manage Country. So the significant barrier there is the Western land management regimes that don't fully align with Traditional Owner cultural practices and needs to - needs as far as our spiritual - our obligations to manage Country, those regimes don't facilitate that, and you see - and I don't want to diminish the hard-fought gains by Traditional Owners when they achieved Traditional Owner Settlement Act outcomes and native title, 45 because they are significant outcomes, but when it comes to the implementation of those - of those agreements and those rights, they are still within - held within sort of guard rails, let's say, to be able to only undertake certain activities. So that's where

new forms of land tenure can open up those opportunities to allow those cultural practices to occur.

5 **MR GOODWIN:** I will ask some questions about those issues soon, particularly in terms of new forms of land tenure and some of the - some of the constraints on Traditional Owner capacity through the lens of the first principles review. But going back to that notion of the hard-fought gains, and particularly from the perspective of your members, there have been five native title determinations - positive  
10 determinations under the Native Title Act in Victoria since the passage of the Act in 1993, and four recognition and settlement agreements under the Traditional Owner Settlement Act since 2010, and that is directly relevant to your members. Would you have hoped there would have been more determinations and agreements made in that time?

15 **MR PATON:** I think first we need to recognise that the time that needs to occur for those processes to reach an outcome often - and it's been mentioned in previous hearings around the trauma that is occurred to our people on country, to our communities, to our histories, our connections. And those processes to address, to bring people together and move forward together do take time. There is a recognition  
20 of that. There is certainly what - support mechanisms to be able to bolster up those - those activities that work towards those outcomes have, in my view - haven't had enough sufficient resolution. And whilst you don't want to speed up the process, there are certain, I guess, outcomes that you can expect by having more resources available to the groups to be able to - to proceed through those particular processes.

25 So I would say that it would be possible, but it needs to be a respectful process. And I would - I would suggest that processes for - of this nature need to be culturally safe, culturally informed and follow cultural protocols to ensure that things are properly considered and that the future of the group is at the centre - and for Country is at the  
30 centre of all processes.

**MR GOODWIN:** And you've mentioned there that - you've drawn a distinction between taking the time to do something right but making sure that Traditional Owners are probably resourced to participate in those processes. Do you consider  
35 from the perspective of the State that it puts enough resources into its own capacity to participate in those processes and attempt to deliver negotiated outcomes under those land justice legal frameworks?

40 **MR PATON:** I think the State is well resourced to be able to service whatever its need may be. The resources - there needs to be an increase in resources from the State to support that - that foundational work, if - if that's the objective of the group is to pursue formal recognition, then the requirement on the State to acknowledge and address our - our history and what has contributed significantly to where  
45 communities are in a contemporary context, then all resources should be, you know, to the fullest of its ability, should be provided to those groups to participate fully in that process. So there, if you were to analyse that, you would say that the State provides - provides its access to its own resources, and I can't back it up with any



numbers, but my observation and experience throughout the years has observed that the State can - has limitless resources available to it and it only provides minimal resources to Traditional Owners to participate in that process.

5 **MR GOODWIN:** And we've - the Commissioners have heard extensive evidence about the impact of colonisation on Victorian Traditional Owners and you are already discussed it as well in your opening statement and throughout your answers to questions. I am interested in your observations as CEO of the Federation and the member corporations. We have talked a lot about the continuing impacts on  
10 community and individuals. I'm interested in whether you see any impact of colonisation on the capacity of Traditional Owner Corporations to function and do their best for their own community.

15 **MR PATON:** Certainly. It's a - it's a common conversation and observation around the capacity for Traditional Owners to, I guess, pursue their own nation interests, to be able to engage and partner with local communities, local businesses and organisations, and a significant ask from State departments and agencies who wish to partner with Traditional Owners. However, the resourcing of that partnership, to be able to activate the outcomes and to achieve the outcomes that are sought through  
20 government-driven policies as something that we've advocated over many years over, to establish centralised foundational funding for Traditional Owners to be able to set up the systems, the processes, have the capacity to respond.

25 And there is an unequal - sort of an unequal kind of resourcing that occurs when you compare like for like with Traditional Owners in the work that they do across a range of portfolio areas and then agencies, such as catchment management authorities and the like, that are significantly resourced over and above Traditional Owners. So there is an inequity there, and it doesn't recognise the breadth of work that Traditional  
30 Owners are faced on a day-to-day basis.

**MR GOODWIN:** If we can bring up page 21 of the submission, and I just want to go to the final paragraph. So - and this goes to your issue around propriety rights and new systems of tenure. So in the submission, it says:

35 "The Federation further submits that real land justice is not merely a function of land handbacks, buybacks and compensation. Real land justice is achieved through the recognition and creation of propriety rights, specifically applicable to the Victorian economic context that ensure First Nation groups in Victoria are supported in their economic development goals".  
40

Has the Federation given any thought to what type of propriety rights you would like to see recognised and created, or, put another in way in terms of your language today, changes in the system of land tenure that need to occur to better align with  
45 Aboriginal world views of Country?

**MR PATON:** I think that different forms of propriety rights extend beyond property, you know, in land, property rights that - that are existing and continue to be granted

now and into the future, that resources from country that Traditional Owners may have a right to and an interest to be able to benefit from those rights, as has the State. And I think to fisheries rights that have been granted that have not delivered any commercial outcomes, any rights for Traditional Owners. I think of renewable  
 5 energy and the rights that are being afforded there, flora rights in regards to native foods and botanicals, and I will come back to that, and even looking forward into biodiversity and carbon credits and rights that are on the horizon and that are going to probably dwarf the numbers that we heard from Minister Dimopoulos yesterday around, you know, income from forestry and from grazing licences and so forth, and  
 10 where Traditional Owners are on the cusp of missing out on those rights yet again, and also water rights. Water rights that are through the commodification of water and the entitlements that were afforded to farmers that Traditional Owners saw nothing of.

15 The industry, we get, I think - we have submitted as part of our submission, some research around the value of the water industry estimated to be valued at around \$11 billion at this - at 2023, so - and that continues to grow and increase. So I think rights - the propriety rights across a range of - a range of areas is something that needs to be better understood and addressed, and how we address those historical granting of  
 20 rights and how do we ensure that Traditional Owners don't miss out again in any future - any future rights that are being granted. So there needs to be real consideration by the Commission about what recommendations it makes in regards to the future granting of rights and - which could potentially prejudice Treaty negotiations, and so whether there needs to be some kind of moratorium or  
 25 something of the like that looks at - or some commitment to partner with Traditional Owners to ensure that there are rights afforded Traditional Owners in the future granting of rights, then that is critical in - in the next immediate future.

**COMMISSIONER WALTER:** Can I just ask to clarify. So yesterday we heard that  
 30 the rights for Traditional Owners to get moneys were - the rights were put there, but it was carefully calculated to make sure that those rights could never be exercised. So I'm just wondering from your answer are there current rights which are proving to be shallow, or where rights exist on paper but in actual fact the right doesn't amount to much, or is there a complete absence of First Peoples in these granting of rights, or is  
 35 it a combination of both? If it's a combination of both, if you could give us an example of where there is supposed rights that aren't actually resulting in outcomes or in other places where Traditional Owners' rights have not even been considered.

**MR PATON:** Great question. I am just trying to think of an example to provide to  
 40 you, Commissioner. I think, you know, not a combination, but water rights comes to mind as far as the limitations. And there was a process of the development of Water is Life undertaken, and is still contained within that. Traditional Owners had to fight very hard to even - for government to keep the door open for access to water rights, so it's not - it's only partly open, let's say. However, those water rights haven't been  
 45 realised. I can't think of another example for you at this point in time, but happy to come back to you.

**COMMISSIONER HUNTER:** Can I just add to that. I'm pretty sure the government are quite proud of Water is Life, yet it's limited and not - there is not very much wriggle room is really - so to put it, for rights for - or there aren't rights in that for water rights for Traditional Owners.

5

**MR PATON:** Water is Life is, you know, a significant and somewhat commendable strategy, but there are limitations contained within it around those entitlements and those rights that government was not willing to kind of entertain.

10 **COMMISSIONER HUNTER:** They consulted, right?

**MR PATON:** Yes, and Traditional Owners advocated for an increase in those entitlements and those rights, and they were rejected.

15 **COMMISSIONER HUNTER:** Thank you. Sorry, just processing. Processing.

**MR GOODWIN:** We might then turn to some of the strategies developed by the federation to attempt to deal with some of the issues that we are discussing. And the first strategy I want to discuss is the cultural landscape strategy. And just - I might, in the background, bring up the poster that summarises the strategy, and there's a graphic at page 2 just in the background. So just before we turn to that graphic, when was the cultural landscape strategy released?

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**MR PATON:** Released in August 2021.

25

**MR GOODWIN:** So to the extent that it had either commenced or before or after your commencement as CEO, do you know what the background to the development of the Cultural Landscape Strategy was?

30 **MR PATON:** It was a culmination of what Traditional Owners have been saying for some - some time around the need to be able to incorporate Traditional Owner governance, Traditional Owner knowledge and practice into - into - well, bring together with Western management systems to ensure that they are appropriately brought together to be able to apply to manage Country. So - so it was an initiative of  
35 Traditional Owners through the advocacy of Traditional Owners to the Department, and to be able to go - go on this journey of the Cultural Landscape Strategy and what are the objectives of such a strategy. What are the requirements, the components as it is described in the strategy, that would need to be played out, but what are the outcomes that are being sought and how do Traditional Owners and government  
40 work together, and this provides, I guess, a framework to enable that.

**MR GOODWIN:** I will go to it, and I will take you and the Commissioners to an example soon. But - and in your opening statement, you mentioned the concept of bridging tools. It's - a unique feature, at least to me, of the strategy appears to be that  
45 it takes as a given the existence of various government strategies on various issues that might have an indigenous component to it, or be wholly in relation to Aboriginal Victorians, but it overlays Traditional Owner priorities in their own words and

according to their own aspirations over the top of or in conjunction with those strategies. And so, am I right in saying that the - you know, the Cultural Landscape Strategy and other strategies developed by the federation are that attempt to put in Aboriginal language and Aboriginal concepts, the government strategies that exist to  
5 create a - you know, an overlay of an Indigenous world view on to those strategies?

**MR PATON:** I would agree. It is the first of its kind in Australia. And it is different to other strategies that the federation has developed and, you know, with Traditional Owners, in that it's - it's a framework for how Traditional Owners and government  
10 work together. Traditionally, other strategies have identified one of the barriers and opportunities. And does it address that to some extent, but this focuses on how to bring knowledge and practice together and work in partnership with government to achieve those shared objectives.

**MR GOODWIN:** So just on the Cultural Landscape Strategy, in your own words, what is a cultural landscape?

**MR PATON:** In simple terms, it's a conceptual unit, and that's conceptualised by Traditional Owners, and that would look different to each group of Traditional  
20 Owners. But a conceptual unit, if you can imagine, it could be an area of Country that is significant for its resources and that's - it has a cultural component, a cultural - a lens that is applied to it to understand and access that Country, or it could be an entire Traditional Owner Country as an entire cultural landscape, so - and anywhere in between. It could be - and these are just sort of suggestions that it could be  
25 described as a traditional song line that moves through country as a cultural landscape, so it's - the concept - like I said, it's a conceptual unit that is ultimately prescribed by and identified by that Traditional Owner group or individual potentially.

**MR GOODWIN:** And at the core of the strategy, it appears to be a desire to heal and restore Country as part of the Cultural Landscape Strategy. It might be obvious, but why is that important to the Federation?

**MR PATON:** It's important that Traditional Owners are - are able to identify and -  
35 and where their rights and interests are not being met. It's important for the federation to be able to understand that from a Traditional Owner view, and aggregate that across multiple Traditional Owner groups to be able to form an understanding from a statewide perspective around what needs to occur to address those issues. So it's important that - for the Federation to have a deep understanding  
40 of those groups' priorities, their Country plans, their challenges, their relationships, and that's including our relationship with them, to be able to provide that support when requested, to be able to advocate more broadly around it, so that there is an awareness of these issues and an expected response from government to address these issues, and it's - it's critical that - that those issues that impact Traditional  
45 Owners across the state are - excuse me - addressed at a statewide level, because often those types of matters are addressed in a legislative context, and those - the legislation, probably yet to be tested, usually applies at a state level.

I am starting to think about other ways to be able to apply legislation that operates at a statewide and a Traditional Owner level. This is in my thinking at this stage. But, yeah, it is important that those - those conversations occur and those relationships are maintained to be able to address the years of - of mismanagement, the years on country and the years of dispossession and - and the barriers that have been placed. And we are continuing to unwind those through these processes.

**MR GOODWIN:** And so you mentioned there a number of program components in the language of the strategy. And so the graphic summarises the five project components for the Cultural Landscape Strategy, namely nations are resilient, nations speak for Country, nations plan on behalf of Country, nations manage on behalf of Country, and knowledge is restored. Are those all interrelated and necessary components for Traditional Owners to meet their aspirations for protecting cultural landscapes?

**MR PATON:** I think they all work together and they've been designed specifically to do that, and just looking at the diagram and the outer, the circle that "People are strong, Country is healing, culture is strong." They all interrelate, and I guess it comes back to my - my first statement around the holistic nature of an Aboriginal world view and how - how we need to address and understand that interrelatedness. But it also works to address some of the - I guess, the - some of the challenges that are still contributing to Traditional Owners' ability to be able to undertake those cultural practices and have power and authority to manage those practices.

And some of those things address the issue of dispossession, whether that be the loss of language, the loss of - and not in its entirety, as we all know, language has been heavily impacted and it contains our knowledges, it contains our stories, it contains our understanding of Country. And so we need to be able to ensure that all these components are working together that Traditional Owners are able to recover those knowledges such as language and land management practices that build on the existing knowledge that's been passed on through generations, and to be able to test that knowledge through - through research partnerships, to be able to apply those practices and to continually learn by doing on Country, and to be able to address those - the capacity and capability - the capacity issues across both sides of the desk, I think, in regards to government and Traditional Owners, and have a deep understanding of what the - what those needs are and work together to be able to resolve those challenges.

So it all needs to happen all at the same time. And, yeah, that is the intent of the strategy is that all of these things need to - need to occur to achieve that broader outcome that Traditional Owners are seeking.

**MR GOODWIN:** And I just want to go to component 4 in the strategy, so if we can bring up page 36 of the strategy. And so there's - this is Embedding Traditional Owner Knowledge and Practice, and so the component objective is to:

"Embed Traditional Owner practice into policy planning and the management of Country."

5 This builds on part of your previous answer around the relationship between the State and Traditional Owners. So the component areas include:

10 "Institutional arrangements of the government are enhanced reflect Traditional Owner rights regarding management of Country. Two-way capacity is developed and co-governance arrangements are in place. And so the outcome is that Victorian Government policy legislation and procedures, enable and embed Traditional Owner knowledge and practice across all cultural landscapes."

15 Is that really connected to - to what you were just discussing in terms of the need for there to be a shift on the part of government's institutional arrangements to provide for the embedding of Indigenous knowledge and the capacity to care for Country?

20 **MR PATON:** Absolutely, and I think just something that comes to mind is - is around Traditional Owners' objectives towards working towards sole management. Currently - currently arrangements for joint management. However, aspirations do exist for sole management as a Tier 1 Land Manager, similar to Parks Victoria. So when you talk about institutional arrangements, what does that look like? How do we work towards that? How do we have that shared understanding of that - that journey that we are going on, to achieve those types of aspirations for - for managing Country?

25 **MR GOODWIN:** And I was going to ask this a bit later, but you've mentioned it so I will ask now, that's something that the submission also talks about, the need for a shift from joint management to sole management for Traditional Owners and that being a key aspiration of Traditional Owner Corporations. Why is that so important?

30 **MR PATON:** I think it goes back to about our obligations to - to our ancestors, to continually care - care for, have authority over and manage Country, so it is an objective of Traditional Owners to meet that cultural obligation, but it also contributes towards ownership, authority, self-determination, economic prosperity that is created through those types of mechanisms that will support Traditional Owners to become strong entities in - in - all across the state, particularly regional parts of Victoria, that will contribute to economic activity, employment, health and wellbeing.

40 So there is broader objectives that are at play here, but ultimately I think, you know, having - having that sense of power and authority and decision making to be able to undertake those obligations without - without any impost of government directly relates back to that - that responsibility, that power and authority that Traditional Owners once held prior to colonisation.

45

**MR GOODWIN:** And there's a really interesting observation on the next page, if we could bring that up. And just highlight that very last paragraph on the right side. And the last two sentences say:

5 "Legislation contains specific clauses that address the exceptional status of Traditional Owners as partners with the Victorian Government with specific rights. However, the overall framing continues to regard activities conducted by Traditional Owners on Country as impacts on the environment to be regulated."

10 I just wanted to give you an opportunity to expand or provide examples of how that plays out for Traditional Owner Corporations in practice, in terms of caring for country.

**MR PATON:** I think often those types of activities that are occurring on public land through joint management and the like are - are often biased towards biodiversity outcomes, Western views of land management, and - and the limitations through cultural fire and the - I guess the utilisation of resources to support economic activity are all kind of limitations that exist. And even - I guess, I think about water as well and environmental flows versus cultural flows. And it - it still seems to be a challenge for - for government to accept that cultural flows deliver environmental outcomes. The reverse is not - is not true, that environmental outcomes don't deliver cultural outcomes, but cultural flows can deliver both cultural and environmental outcomes and that is what Traditional Owners are seeking in the water space for that - for those - those opportunities.

25 I think Water is Life probably addresses that to be able to enable that to occur, but it is still yet to be fully realised, so I think that by - by implementing the Cultural Landscape Strategy, we can work towards recognition of - of traditional practices that are recognised as formal land management practices, if you - if you want to put it that way.

**MR GOODWIN:** And if I can go then to page 39, so it is just two pages on, which really shows in a graphic sense what you've just described, so you have government policy and planning instruments on the left, and then you have cultural elements on the right, and then potential bridging tools that bring those two pieces together. So even if we look at the third line that - under:

"Statewide level policy instruments".

40 You have the government policy of reformed public land legislation which is proposed in the regional forest agreements, then the cultural elements the application of traditional knowledge and practice in healing and managing Country, then just as you have been describing in some of your answers, a bridging tool to bring those two pieces together would be a Traditional Owner Corporation being the land manager, so I just wanted to allow you to explain to the Commissioners about how the Strategy is designed to attempt to draw together what you've just discussed in terms of Traditional Owner cultural aspirations and State policy.

**MR PATON:** The Strategy is designed deliberately in that way and across all the five component areas that looks at a Traditional Owner element - cultural element, the - as is on the screen, the government planning instruments. And what - what  
5 needs to sit between or what are the outcomes through that partnership and working together that's going to deliver on those shared objectives, let's call it, and then that is how the bridging tools have been designed, to be able to provide examples of what that might look like if the strategy is successfully implemented.

10 **MR GOODWIN:** And on the implementation, I mean, the Strategy is purposely high level, and it says directly in the Strategy that there is a requirement for an implementation plan to track after the Strategy, and a desire for support to develop that implementation strategy - implementation plan is directly in the Strategy. Has  
15 the Federation received any commitment by government about the creation of an implementation plan?

**MR PATON:** Yes, the Department has, alongside Traditional Owners, has supported the Federation to facilitate the initiation of the Cultural Landscape Strategy through the development of a monitoring, evaluation reporting tool that will  
20 measure its progress as well as to facilitate capacity building and communities of practice within - amongst Traditional Owners to guide and - and - sorry, and to support co-governance arrangements to guide the implementation of that strategy, and I understand that DEECA has directly supported Traditional Owners to be able to participate in that process.

25 **COMMISSIONER WALTER:** How far along is that?

**MR PATON:** Just thinking it's probably - I think it's 12 months, somewhere around there, I haven't got the dates at hand, I'm sorry, but it was probably - it is probably at  
30 about 12 months, and the funding commitment is only for two years, so clearly there will be further commitments that need to be made. However, the initial commitment has been for two years to -

**COMMISSIONER WALTER:** There isn't actually an implementation plan or an  
35 evaluation plan existing right at this moment?

**MR PATON:** There is an evaluation reporting framework or tool that was - that was produced by consultants at Federation engage today produce that tool to be able to  
40 track progress of the implementation.

**COMMISSIONER WALTER:** Has that been deployed, or has it just been developed as a tool? Because I note here it says here by December 2025, you will  
45 have achieved some of these outcomes. So how likely is it that by December 2025 - from what you are saying, there still hasn't actually been - there's been no movement across to actually translate and implement.



**MR PATON:** Not in its entirety. I think there was - there was definitely a delay in the beginning of the implementation, it was only through our - our advocacy that that - that implementation got underway, because -

5 **COMMISSIONER WALTER:** Who's responsible for this plan, for its implementation and its monitoring and ensuring that it actually delivers what it says it is going to deliver?

10 **MR PATON:** I would say it is joint responsibility between Traditional Owners and partners, between - DEECA and Parks Victoria are all partners to the development of the Strategy, therefore the commitment is to work together going forward on the delivery and the implementation - of the implementation of the Strategy. But it obviously requires resources and acknowledging that there are challenges with regards to capacity to participate. But there's no - there's no indication of future  
15 funding at this point in time, not from any information that I have available to me, but I also participated in a cultural landscape symposium on just last Friday, where the Department of Premier and Cabinet introduced a pilot program that they call SAHA, Strategic Aboriginal Heritage Assessments, which, by my analysis, is a reading Country program which allows Traditional Owners to go out on Country  
20 understand capture those values and self-determine how they collate and use that information to be able to respond to future activities on their Country.

**COMMISSIONER WALTER:** Just as a final thing, I mean, I think this is a pattern we have seen again and again and again, where there are wonderful strategies  
25 developed from huge amounts of effort and work from Traditional Owners, and then nothing, as if the Strategy itself is the outcome.

**MR PATON:** It is a - it is a common theme amongst government strategies and policies. I think there's several elements at play, the cycles of government, budget  
30 processes that don't allow government to commit beyond three years. There needs to be agreements that could be established through Treaty, perhaps, that commit secure funding regardless of - of government.

**COMMISSIONER WALTER:** I'm just wondering if any other sector of the  
35 Victorian population has this pattern with strategy after strategy, framework after framework, that result basically in non-delivery, and - beautiful artwork, but yes, it breaks my heart to see all this work has been put in for then no follow through, as if somehow the job is done because we have a strategy, even though we've not put any resources or any responsibility in actually achieving that strategy.  
40

**MR PATON:** That certainly is a pattern of behaviour. My mind goes to the Cultural Fire Strategy which proposed an implementation budget of \$122 million. The government provided \$20 million across all Traditional Owners and nothing further, so it's - it's - is it going to meet its objective - the desired outcomes? I think not.  
45

**COMMISSIONER WALTER:** When is it time to say, "We are not going to do another strategy until you have completed the last one"?

**MR PATON:** Interesting. My mind goes to just something that's been learned by me in my Closing the Gap participation as well, which is a Treasury process, which is the early Intervention Investment Framework, that doesn't consider these types of activities as early intervention, and I raised that with the secretary of DTF. When you think about what is contained within that framework, I am not sure if the Commission has looked at that, but it looks at health and wellbeing and what are the sort of early interventions that government can invest in to support those types of outcomes, and healing Country, connection to Country, Aboriginal wellbeing and family supports, although maybe not family - healing Country-type activities are not anywhere mentioned in that framework as a preventative measure. And that's what's - when there are budget bids and there's - that's what gets used as a tool for decision making for budget allocations.

**MR GOODWIN:** I want to briefly now turn to the Federation's Native Foods and Botanicals Strategy. Just while we are getting the vision and purpose drawn up, on page 6 of that strategy, the Strategy mentions that the value of the native foods and botanicals strategy is approximately \$50 million per year in Australia, but has growth potential upwards of 250 million in the near future. But the strategy also interestingly notes that while there is, in some parts of the country, significant Indigenous engagement in growing raw native foods and botanicals there is very little Indigenous ownership of enterprise that then sells those goods. Do you think that the industry represents a potential economic development activity here in Victoria?

**MR PATON:** I think there's a significant opportunity for Traditional Owners to assert their place in that industry, given that the knowledges that were - that - that Traditional Owner knowledges that support that industry are not recognised and have not been addressed, and need to be addressed. The frame - the Strategy looks at intellectual property and how - how Traditional Owners have - have not been recognised for that knowledge and how you attribute that knowledge to provide benefit, but the growth in the industry and the - I guess, the - the value-add that is also part of this conversation when you look at an industry that is already well-established and how - and how do Traditional Owners kind of catch up in regards to an industry that's - that's, you know, growing at a rapid rate and they're left behind.

So what are - what are the kind of the approaches that can be applied to - to enhance economic outcomes for Traditional Owners in this space? Intellectual property is one. We also produced a set of protocols that's been provided, that's an attachment to the Strategy. That sets out the relationship that should be established between the industry and Traditional Owners to provide benefit, provide business arrangements to be - to recognise that through provenancing, Indigenous partnership and knowledge that is contained within those native food materials can provide a value-add to the industry in that the consumer is prepared to pay a premium to - to have that story, to have that knowledge as part of that product.

So the protocol sets out a template agreement that - that Traditional Owners and existing businesses could enter into, but also alongside that is the opportunity - and there are already Traditional Owner groups who are developing their businesses, doing seed collection, growing plant material that supports local cafes. There's even a  
5 consideration towards a cooperative that Traditional Owners have identified to be able to kind of come together, to bring - bring those plant materials together in a cooperative arrangement that can then supply the market to bolster up that - that kind of positioning within the market, so all of those things are being considered through the - through the Strategy, but I think, you know, we need to position Traditional  
10 Owners in a way, because intellectual property typically is a Commonwealth jurisdiction, I think, you know, at a national level, and there is not a lot of appetite.

But there are encouraging signs because the Commonwealth have undertaken an intellectual property, you know, investigation, particularly around art and dance, that  
15 could be expanded out to areas such as native foods and botanicals, that recognises Traditional Owners as knowledge-holders and owners of that story, of that knowledge, much like dance and art are, and reimagine within the community about Traditional Owners' place in that industry. So it's not, I guess, in addition to that. It's potentially given - depending on what the outcomes might be, at that Commonwealth  
20 jurisdictional level, if there are still no recommendations or reforms in that space to be able to support native foods and botanicals for Traditional Owners could potentially be a treaty item that could be recognised through recognition of - of flora rights or - or something of that kind.

25 **MR GOODWIN:** And I will just show the graphic on pages 12 and 13 which essentially summarises the evidence that you've just given, so there is a connection between provenance, which is about the protection of Indigenous cultural and intellectual property practice, so to build capacity in Indigenous communities and to  
30 apply Indigenous knowledge across the supply chain and then also participation in the market. So all of those, as you have just described, all of those things go hand in hand in terms of Indigenous aspirations for that industry.

**MR PATON:** That's correct. And they - they all need to, again, happen at the same time. That is not always the case, but if there is a - if there is a sequencing to that,  
35 then that would need to be, I guess, considered, but like I said, we're playing catch up with an industry that is already kind of well-established or it's establishing and growing at a rapid pace, so we need to do whatever we can to be able to - to meet those expectations and consider the rights of Traditional Owners in this space.

40 **COMMISSIONER HUNTER:** Can I just ask, how far along is this Strategy, where's it sort of at, or with funding at all?

**MR PATON:** There is - just trying to trying to jog my memory. It's been several  
45 years since it has been established, 2020, the end of 2020. It was just after I started at the Federation. So it's been supported up until now by Ag Vic, and that - that funding is soon to dry up, and, you know, only part of the work's done. We've got protocols. We've got looking at like I said intellectual property. There was still - some business

grants to support businesses to be able to scale up their businesses and build capacity but that was a one-off kind of offering. There's been, I guess, a policy shift with the change from Ag Vic sitting in one department to moving to another, and that department has a different approach to how - how it supports initiatives such as this, and that's had an impact on future, I guess, future activities to support the implementation of the Strategy.

**COMMISSIONER HUNTER:** And did the Strategy come with any land? Have any of these strategies come with any land, because they all revolve around it, and then the funds -

**MR PATON:** No.

**COMMISSIONER HUNTER:** I am particularly concerned that you are the conduit, right, and that you have to go and get the information from Traditional Owners, which is all good and well, but then it doesn't get implemented. So where does that leave you as the sort of holding body of knowledge, like, as the corporation? Where does that leave you with Traditional Owners? I mean, that could leave you in a bit of a bind at times.

**MR PATON:** Yes, I think we - we always undertake the approach of looking to extend the Strategy, ensure that it meets its full implementation and I guess what we'd like to - to see is a long-term commitment, but alongside that, we need Traditional Owners to be also advocating for that continuation.

**COMMISSIONER HUNTER:** Yes. I am just - nothing comes with land. That is all. Just -

**MR GOODWIN:** Perfect preface for the discussions of the first principles review.

**COMMISSIONER HUNTER:** You go.

**MR GOODWIN:** Sorry, Commissioner.

**COMMISSIONER LOVETT:** You're showing great diplomacy; I'll say that. You - the Federation, sorry, get funded money from the government to be able to work with Traditional Owners, you know to be able to develop these strategies?

**MR PATON:** Money - funding gets provided for those strategies. There is no funding - core funding for the Federation.

**COMMISSIONER LOVETT:** From the Victorian Government? Thank you. That's all.

**MR GOODWIN:** So the final topic I will wanted to ask some questions about is the First Principles Review. Could you briefly explain the background to the review?

**MR PATON:** The First Principles Review was initiated in 2020, early 2020, I believe, and -

5 **MR GOODWIN:** The terms of reference was signed off by Cabinet in October 2019, then I think it kicked off formally in 2020.

10 **MR PATON:** That's why I was a little bit hesitant there. I thought exactly the same thing. It was based and initiated by Traditional Owners wanting to reconsider the principles and the outcomes from the Traditional Owner Settlement Act had it been  
15 passed 10 years since it had been established, so that alongside the findings of - of Timber Creek in the Northern Territory and the compensation formula, those two events occurred at the same time and Traditional Owners - through the advocacy of Traditional Owners, the Attorney-General at the time, Jill Hennessy, agreed to establish the First Principles Review Committee to work with government on reviewing the Traditional Owner Settlement Act under those - under those broad objectives.

20 **MR GOODWIN:** And the governance arrangements for the review were that there was a First Principles Review Committee made up of Victorian Traditional Owners and an executive policy owners forum made up of senior executives from government departments and agencies; that's right?

**MR PATON:** That's correct.

25 **MR GOODWIN:** And the report's structured in such a way that there are recommendations made that are joint between the Committee and the Forum, if I can put it that way, and recommendations that are individual to either the Committee or the Forum. That's right?

30 **MR PATON:** That's correct.

35 **MR GOODWIN:** And so I just want to go first to the terms of reference, and in particular to the scope at pages 89 and 90 of the review, and so those are highlighted there, and it appears that these really set out a number of the concerns of Victorian Traditional Owners that led to the review. Is that right?

**MR PATON:** Yes.

40 **MR GOODWIN:** And so you will see there that there are particular issues under natural resource agreements, which might form part of the settlement package under the Traditional Owner Settlement Act, and you will see in the second dot point under that heading Restrictions on Access on Flora and Fauna, you just mentioned that during the course of your evidence, then the fifth dot point, The Commercial Use of  
45 Natural Resources, something else you have mentioned in your evidence. And then under Land Use Activity Agreement, which is another agreement that can form part of a settlement package, there is reference to the community benefits formula in light of Timber Creek and some other issues.

And then in the next heading under 'Recognition and Settlement Agreement', there is some further dot points including the first, Review Mechanisms, the third, Compliance with Obligations, fourth, Enforcement of Compliance, and then fifth, the Funding Agreement. So - and then implications of Timber Creek with respect to negotiation of settlement packages. So, am I right in saying, from your perspective as CEO of the Federation, that these are generally some of the concerns that your members have in relation to the operation of the Traditional Owner Settlement Act?

10 **MR PATON:** I would agree. That is correct.

**MR GOODWIN:** So I don't want to take you through, obviously, the entirety of the report, but I want to focus on some key recommendations. So if I can bring up page 76 of the report. These are the recommendations. And in particular, I just want to focus on recommendations 1 and 2. So first it was a joint recommendation of both the committee and the forum that Settlement Act agreements should represent a fair and just settlement. That's right? And that's a change from the current policy which uses the language of an attractive and fair alternative to settling claims through the Native Title Act. That's right?

20 **MR PATON:** That's correct.

**MR GOODWIN:** So why is that change important from your perspective at the federation?

25 **MR PATON:** I think the addition of "just" is where the focus is on that - on that recommendation. Clearly, we need to - it goes back to earlier comments - address the injustices of colonisation and Traditional Owners' ability to have power, authority and actively manage Country, and therefore that term "just" needs to recognise the significance of the impact in the settlement that is agreed to ultimately. And yes, it needs to consider that appropriately, rather than some kind of attractive and arbitrary outcome, where if we are talking - versus, I guess, compensation, monetary compensation, then more broadly rights and so forth that can be included in that - in that agreement, then that contributes towards just outcomes.

35 **MR GOODWIN:** Now, there's a qualifier that immediately follows in terms of recommendation 2. So recommendation 2 was not joined by the State, but states:

40 "The calculation of compensation should not be limited to activities occurring post-1975."

Now, that's a response to the fact that under the Native Title Act, compensation is only available for acts attributable to the state that occurred after the enactment of the Racial Discrimination Act. You understand that?

45 **MR PATON:** I do understand.

**MR GOODWIN:** And so why is compensation - why is it important for Victorian Traditional Owners that compensation be available for acts done prior to 1975?

5 **MR PATON:** I think my assessment of connection to that time is that through that Act, there are protections through that Act that need to be, you know, followed by government to not racially discriminate against Aboriginal people. However, my view is that prior to that time, most of the impacts occurred that have led to the legacies that we continue to experience today. They all - all of those acts occurred before 1975 and set the foundations for - for the way that we are able to practise and exercise and activate our rights. So it seems that - that that is not being recognised, that those impacts are not being recognised prior to that - to that date.

15 **COMMISSIONER LOVETT:** Have you got any more you want to share about the ongoing impacts of colonisation pre-'75? You shared a few, but I just wanted to give you a further chance if you wanted to elaborate more, in - particularly around that for Traditional Owners.

**MR PATON:** Well, one that comes to mind, language obviously.

20 **COMMISSIONER LOVETT:** Yes.

**MR PATON:** The prohibiting of speaking language and the impacts that that continues to have today on people's ability to - to speak language, to be able to understand language, to be able to, you know, access knowledge and connections through language. I think about that - the movement of our people across the state to mission reserves from one end to the other and disconnection to Country, to family, to - to those stories, that people are still finding their way home today, and that's still directly due to those types of policies, those activities that - that continue to affect our people to this present day.

30 **COMMISSIONER LOVETT:** Have you got anything further to say around the wealth that's been generated by non-Aboriginal people during that time, as in pre-'75?

35 **MR PATON:** It was from my understanding, you know, a granting of property freehold title to graziers, to farmers, to people at that time, that have - have been held in those families through generations, and - and that has created intergenerational wealth that - that still exists today and that was not afforded to our people at that particular time. There was - as our people were moved out of towns into missions and so forth, those - those types of acts inhibited our ability to build skills and participate in the community, in the economy, and - and that - that set up a cycle of disadvantage that continues to affect our people today.

45 **COMMISSIONER LOVETT:** Thank you.

**MR GOODWIN:** If I can go to pages 28 and 29, and building on your interaction with Commissioner Lovett, so pages 28 and 29 go into a little bit more detail about

the difference of opinion between the Committee and the Forum regarding this particular recommendation, and I just note in the second paragraph under the committee's comments that the committee stated it believed that:

5 "Limiting the ability of compensation until after the enactment of the Racial Discrimination Act is entirely arbitrary, inequitable and unjust, and recommend it should be abandoned by the State. The colonisation of Victoria and dispossession of Aboriginal people from their lands largely took place prior to 1975".

10 So that encapsulates your comments as well. I note that the State does say - well, the Forum - comments in their second paragraph:

"Additionally, it is foreseeable that compensation for loss or impairment of rights as a result of actions prior to 1975 might form part of future Treaty negotiations."

15

Are you - while that might be correct, are you concerned that the government is, in effect, pushing consideration of this matter to the Treaty process?

20 **MR PATON:** I think that - I think Treaty is going to consider a range of the kind of rights and redress and compensation, and I think to consider it broadly is - is something that allows, in that negotiation, the ability to balance out those outcomes, you know, between redress and - and rights, and recognition and commitment towards future education can all be addressed at the Treaty negotiation table.

25 **MR GOODWIN:** Just a final and second recommendation I would want to discuss is recommendation 18; that's on page 45. So it's a joint recommendation that the Settlement Act and the Natural Resources Agreement template be amended so to accommodate the commercial use of animals other than fish to create parity with the provisions providing for commercial use of vegetation, stone, et cetera. By way of  
30 background, my understanding is that Traditional Owner groups have the capacity to negotiate commercial use of vegetation and stone but not of animals in the current situation in terms of settlement agreements. Is that right? And it's not an immediate right; it is just simply the right to negotiate that with the State in the course of settlement negotiations?

35

**MR PATON:** Mmm-hmm.

40 **MR GOODWIN:** And then it was an individual recommendation that - by the committee made up of First Peoples that the commercial use include fish. That's right? If we go on to the next page on page 46, and if we go to the final paragraph under the FPRC comments and highlight that, so the penultimate paragraph. Yes, thank you. So the committee explains what we've just discussed essentially, that there is a desire to be able to negotiate on both vegetation, stone and animals, including fish, and that this wasn't a request for the right to do so, but the right to  
45 negotiate it as potentially as part of a settlement agreement. And then the Committee notes:



"In other words, the request was conservative, and the exclusion of water and fish is not a reasonable exclusion. In doing so, it does not so much prevent Traditional Owners exercising commercial rights over these resources, but instead prohibits even any negotiation or discussion about doing so. The Committee is disappointed and  
5 disagrees with this exclusion, particularly in circumstances where native title commercial rights continue to be explored through the courts. Nevertheless, the Committee has endorsed the joint recommendation in the hope that at least some minor and limited change can be achieved."

10 Given all we have discussed about economic empowerment, on Country, and particularly thinking about the native foods and botanical strategy that we've discussed and those issues, are you disappointed that even a conservative request, particularly to include water and fish, in that regard, was not agreed to?

15 **MR PATON:** Extremely disappointed by the response from the State in regards to not even including the ability to negotiate around - around those - those areas. I think there is probably some - some, I guess, considerations around the, I guess, the size of those economic activities. I mentioned before water, the value of water, and I don't know, but I can only imagine the size of the aquaculture and fishing industry. And -  
20 and it seems to me that the State is kind of protecting those assets, and knowing - knowing the value that that provides to the State and the State's bottom line, then that - that's the only conclusion I can come to in regards to why those are off the table, and I note - I don't think it is up there but somewhere else in there, the response is somewhat from Fisheries is somewhat opaque and doesn't provide an adequate  
25 reasoning as to why fisheries have been excluded from being added to the list.

**MR GOODWIN:** My final question is just about the review as a structural one about the institution of government itself. There was some comments by the Committee, and if we can bring up page 18 of the review and highlight the third  
30 paragraph. I won't read it all out, but I will commence from the middle. It's a statement that there were:

"Long delays while the Forum considered positions put forward by the Committee. Presumably this time was spent in internal debate. While it is understood that whole  
35 of government decision making is complex, viewed externally from the position of the Committee, an excessive amount of time was spent on issues long articulated by Traditional Owners and for which it was assumed Forum members would be well versed and ready to propose alternatives. Indeed, it is notable that some departments sought to amend recommendations and add last-minute conditions up to and during  
40 the final drafting of the report when there was no time for further discussion or debate."

Are you frustrated by the fact that First Peoples made that comment in relation to the review, and what does it say to you about the institutional capacity of the State to  
45 deal with First Peoples' aspirations on land justice?

**MR PATON:** I - I think the State doesn't have a - a good understanding of Traditional Owner self-determination and the rights that - that are afforded to us through - hasn't - hasn't invested in its - in its own capability to be able to understand self-determination, not to a level that needs to reform departments and agencies to  
 5 activate our rights to identify and address policies that don't meet the minimum standards in UNDRIP, and there continues to be a misalignment with - I guess it is understandable with in some ways - that the holistic nature of an Aboriginal world view versus Western world view continue to not align. And then, therefore, you see the types of institutional structures within government that are unable to kind of  
 10 grapple with a holistic world view, and that continues to - to impact on our ability to - to address these - these shortcomings within legislation and policy and often, you know, deliberate policies that exclude Traditional Owners, and it is also probably coupled with vested interests on behalf of the State.

15 **MR GOODWIN:** Commissioners, I am going to move on from the review, so I wanted to pause in case there were any specific questions.

**COMMISSIONER HUNTER:** Yes. Just on that, I think you are being very generous, very diplomatic. But without really understanding the whole process of  
 20 this, what would you say to all the self-determination policies and the talk of self-determination within government, and then you get this response. What would be - and don't be diplomatic, can I say that?

**MR PATON:** Again, there's a lack of investment. There's certainly a recognition  
 25 that these self-determination divisions, works -

**COMMISSIONER HUNTER:** Strategies.

**MR PATON:** - works are set up, but they're - they're not sufficiently supported and  
 30 resourced to make an impact at a departmental level. I worked in the Department and I -

**COMMISSIONER HUNTER:** I think you're being generous. Do you think they  
 35 understand self-determination?

**MR PATON:** No, I have been saying it for years to government that government  
 and the public service doesn't understand self-determination, and they need to invest  
 40 considerably in shifting the psyche of the public service and developing a deep understanding of - of our rights and self-determination, so that the public service can do their job and deliver on the commitment of government to enable self-determination for Traditional Owners here in Victoria.

**COMMISSIONER WALTER:** But it's not that hard, is it? I mean, we have  
 45 UNDRIP, we have all these things. So there is a real gap between what is very clear, what self-determination is, it's been defined, and strategies and a complete lack of action. This isn't a matter of education. It goes much deeper than that. It seems to me

there is a lack of willingness to actually move over that line from talking about it to doing something.

5 **MR PATON:** Clearly. It's - I understand it's, you know, a significant piece of work, but there needs to be the recognition for that to occur and for - for that investment to support and work towards that institutional shift, that capability shift, the - the capacity shift that needs to occur. And without it, we'll still - we'll still be - be here subject to government's interpretation of self-determination, which we often say is just more engagement and - and not the handing over of rights, our own authority to  
10 our mob.

**COMMISSIONER LOVETT:** One of the - I mean, 2014, Victorian Aboriginal Affairs framework came out, and one of the top guiding principles is self-determination. 2014. So what's that? Let's say about 10 years ago. Yes, 2024 we  
15 are in, 10 years to get their head around self-determination. It is just quite disheartening. I just want to take you back to a place where we were talking before about the recommendations being changed and government trying to interject last minute around what they wanted to see in there. Can you describe - without naming anyone, can you describe the sentiment amongst yourselves or the Traditional  
20 Owners or the working group about how the mob felt, where they put their heart and soul in that work and worked really hard on behalf of all mobs to try to get really good outcomes for the future. How was - can you just talk a little bit about that?

**MR PATON:** I guess it brings back experiences of similar, you know, responses  
25 from government, a lack of respect, the under-communication, if you can call it that, that was actually in breach of the terms of reference of the review, and for them not - coming with an outcome such as this, with one - one agreed and all but seven, I think I have got that right, all but seven agreed in principle. But see, again, the caveat is there needs to be further consultation, and yet those policy owners were part of that  
30 process, so it doesn't - it just doesn't - just shows a lack of respect, and, you know, Traditional Owners just feel that they're just getting the same service from government that they've always got, and you can never, you know, hold your breath around government coming to the table genuinely to work together and make - make commitments that it will follow through with -  
35

**COMMISSIONER LOVETT:** What people in society don't realise, when you negotiate a traditional settlement agreement, you negotiate or forego future rights. So you are really trying to pin down the rights and opportunity of how you can make sure that - things can happen through that negotiation, it is really disheartening to  
40 hear, when there is active attempts as we saw yesterday, around our people's rights being respected and upheld and implemented.

**MR PATON:** And if I can respond, and I will just reflect on our earlier conversation that the Commissioner had with the assembly in regards to accountability. And, you  
45 know, one of the, I guess, conversations in the review was around where afforded rights had been agreed to within those agreements, where - when they are not being met, there was - there was no accountability to government. There is no one. And the

5 same happens with the delivery of the strategies or any of that, government will bat it away and say, "We'll do better next time, and you can write out your media statements and you may or may not get it picked up." And, you know, it doesn't - government doesn't seem to be too concerned mostly, I wouldn't say 100 per cent of the time, with those types of attempts to hold them to account.

10 I think going forward with Treaty, we have the Authority as an independent arbiter and those agreements that are being made in Treaty, that's probably an answer to that question earlier, is where those agreements in Treaty are not being implemented, realised, then where does that accountability sit? Does it go back to the Authority? How do we, you know, ensure that there is an accountability mechanism there and that there is a significant impact on, let's say government if they don't meet that agreement, that - that can't just be, you know, dealt with through - through - sorry.

15 **MR GOODWIN:** That leads well to my final question: what are your aspirations for the Treaty process in Victoria?

20 **MR PATON:** I think they're quite broad. I think they need - picking up from some of the previous comments, but there needs to be recognition of our past and a commitment to address those truths that - that come out through this process and through Treaty. There needs to be a - there needs to be, I guess - I'm not going to say bundle of rights, but a range of outcomes from Treaty that addresses some of the inequities, the rights.

25 There needs to be a compensatory element that addresses those economic opportunities that haven't been able to be realised, and I think - and going forward, that you know, that there needs to be recognition of our place in society, and - and how we walk together as a - as a country, going forward as a community, and that we're ensuring that we're tracking how we are going and having a relationship that can make adjustments along the way, and that is embedded in UNDRIP, that it meets  
30 the - that UNDRIP is embedded into the Treaty Agreements, it is embedded into policy and legislation and even potentially, what's the word, justiciable - I can't say that word - justiciable rights that may be introduced where our rights are not being met. I point to British Columbia where they have introduced those types of rights  
35 into legislation. So I think the future is bright, but it requires a real commitment on government to walk this journey together, with openness and honesty and commitment.

40 **MR GOODWIN:** Those are my questions, Commission. I'll just attend to some tendering. I'll tender the First Peoples' Assembly's submission that was relevant to this morning's evidence. I will also tender the submission of the Federation, the two strategies that we've referred to, and the particular poster of the landscape as well, so yes. Thank you. That ends our afternoon session, Commissioners, thank you.

45 **COMMISSIONER LOVETT:** Thank you. Thanks very much for coming in. Appreciate your time.

**MR GOODWIN:** I believe we are adjourning now until tomorrow.

**COMMISSIONER LOVETT:** Okay. Thank you.

5 <THE HEARING ADJOURNED AT 3.55 PM

<THE HEARING RESUMED AT 3.58 PM

10 **COMMISSIONER LOVETT:** The Yoorrook Justice Commission is now resumed.

**MR GOODWIN:** If the Commission pleases, I will now ask for a pre-recorded video of Uncle Jim Berg to be shown on screen.

15 **COMMISSIONER LOVETT:** Thank you, counsel.

(Video of statement of Uncle Jim Berg played)

20 **UNCLE JIM BERG:** My name's Jim Berg, Gunditjmara Elder. I'm 86 years old, and I'm here to make a statement on who I am and what I am. And I've got a couple of poems here just to build up on my submission in relations to my background. This is about my dad.

#### **My Dad**

25 "Where are we going, Mum?" As she led me by the hand and started to walk down Napier Street, Fitzroy.

"We're going to see your dad."

"Where is he", replied the four year old.

"He's down in the cell of the Fitzroy Police Station."

30 "Why", says I. I was told that I talk too much (indistinct) behind the steel bars of the cell on a cold concrete floor covered with a blanket over his head. Dead drunk was he. Not a word was said that I can recall as we walked out of the police station doors. I never saw my dad again.

35 It was at Framlingham Aboriginal mission when I was 10 before I heard my dad again. It was a stormy wintry thunder-clapped night the rain came down like a river in flood. The kids lay between blankets, curled up to keep warm. It was a six dog night. The thunder that rocked the house got replaced with another sound. It was a drunken voice outside the front door, "Let me in let me in", then the fist and the boot hammering and kicking the door, "Let me in, let me in". My mum yelled out, "Go away and leave us alone. Go away and leave us alone." The hammering and kicking of the door continued. The drunken voice got louder and was yelling out, "Let me in, let me in." Us kids shivered under the blankets, not from the cold but from fear of the unknown drunken voice behind the front door.

45 Mum called out to us kids to hurry up and get out of bed. "We have to go." We all left with nothing but what we wore, no time even to put on our shoes. The last thing we heard as we fled out through the back door was the fist and boot hammering on

the back door and the drunk voice yelling out, "Let me in, let me in." We fled down the rain-swept muddy road to Aunty's place a couple of Ks away, down the road. Mum told our Aunty and Uncles that our dad was drunk and was trying to break down the front door. Our two Uncles left to sort him out. I learnt years later that

5 Uncle found my dad staggering across and down the road, had both of his arms held out in front of them. They saw blood running from his two slashed wrists to his fingertips and to the muddy rain-flooded road. He had broken the windows in his attempt to break in and some broken window glass was embedded in both wrists.

10 He disappeared after this night. We never knew where to. During my early years, I was known as a Clarke with an E, my mum's maiden name. As a teenager, it didn't feel like I felt guilty that I denied my father's name which was Berg. Over the years I often wondered about my dad and his family, none I ever known or seen. I was told he was taken away from his mum and became part of The Stolen Generation. He was

15 like thousands of other Koorie kids who became The Stolen Generation that lost their identity, language, dignity, pride and spirituality. They fill the prisons of today. Who shall we blame for what they turned out to be? My sister saw her dad before he passed away. Rest in peace, Jim Berg Senior, I'm proud to bear your name.

20 **Message to the young Koories of Victoria**

Young Koorie of this land now called Australia, you are the custodians, educators and ambassadors of the oldest continuous and resilient culture in the world. Stand tall. Maintain your culture, language, identity, spirituality, dignity and tribe. Be proud of who you are. May the spirits of my ancestors be with you on your life

25 journeys.

**COMMISSIONER HUNTER:** Can I just ask you about your – because I know you had a lot to do with it, with repatriation, making people respect their - and I really honour the work you have done for those, making sure they are back home and

30 they're safe. If you're okay with that -

**UNCLE JIM BERG:** I'm okay.

**COMMISSIONER HUNTER:** I would like you to talk about your part you took in that, because I think that is really honourable work and there is not many people who would do what you did, Uncle Jim, and I would like others hear about that work.

35

**UNCLE JIM BERG:** Well, I've walked in the steps of my ancestors like Stuart Murray, yeah, and Aunty - what is her name, the one in the wheelchair.

40

**COMMISSIONER HUNTER:** I'm not sure who you are talking about.

**UNCLE JIM BERG:** It'll come to me. They, back in the '50s, approached the State Government in regards to the repatriation of ancestors. So I'm jacky, jacky come late, because that was in the '50s. Nobody knows about it or don't want to know about it.

45 It's in the book, Aunty Marge Tucker, both of them wanted the repatriation of ancestors back to their Country. It didn't happen.

When I was in the Aboriginal Legal Service as the CEO, the Government made me an inspector under the *Archaeological Preservation Act 1972*. And that empowered me to be on the committee to make decisions in regards to Aboriginal culture. And one particular day, Joel's Auctioneers down at St Kilda, one of the big ones, they was having an auction of cultural material from South Australia. Treasures, antiques of our people. Last - yeah. And I was told that under the legislation they should get permission. They didn't. So as the inspector, I seized all the material. It was on the ABC. And went to court, but before they were holding a meeting and I told the government, the Labor Government at the time, that they should prosecute Joel's Auctioneers, and got a reply back to say, "We're not going to prosecute, Jim, because we prosecuted two other auctioneers for the same thing and we lost the case, and we're not going to lose a third one." So me being me, I said, "Right, if you don't change your mind", this was about 1 o'clock, "by 3 o'clock, I am going to prosecute you, the State Government, for not fulfilling their obligations under the Act to prosecute." 3 o'clock - you know what a telegram is?

**COMMISSIONER HUNTER:** Yes, yes, that is a while ago, ago.

**UNCLE JIM BERG:** Yeah, yeah, yeah, you're not that old. They said, "Proceed, Jim, to prosecute, pick your own team." And I knew - I was told by my team, Ron Merkel and Ron Castan, that the chances were I wouldn't succeed. I said, "Big deal". There is an Act there; we have got to prosecute. It took a week. I was in the stand for two days. We lost, as predicted, but the Act was changed where museums and universities, keeping places had to get permission from the government before they can proceed with selling or loaning material.

Somebody came along one day and says, "Jim, the museum is sending the Kow Swamp and the Keilor skull to America for scientific exhibition." I said, "Oh, yeah". So I hit them with an injunction with my mates, Ron Merkel, we are still friends after 50 years, and they didn't send the material to America because they were prosecuted. They didn't have permission. Back in those days, anybody who wanted a loan of material brought them back and just dumped them in the back door of Swanson Street, just left them there.

Then somebody told me about - showed me a magazine of the University of Melbourne, the Murray Black collection, 800 remains. So I flexed my muscles again, legal muscles, and we prosecuted them. The - Gary Bamblett and me went across - I have to tell you this - went across to the university and went up to Professor Caro, the Vice-Chancellor's office, and he kept us waiting outside for 10, 20 minutes, walked in, he was standing there with another gentleman beside him, and handed him the injunction. He looked at it and gave it to his - which turned out to be his solicitor. He said it's kosher and Caro said, "Who in the hell do you think you are? We are the museum - the University of Melbourne and we own these remains; they're ours." And I had the injunction. I took the injunction off him and held it in the air over my head and I said, "I am the law."

And this other individual, David Pennington, I went there to hit him with another injunction because he was in charge of the anatomy department, and had him on the phone, we discussed it, and he said, "Who is your superior?" And I said, "What that mean?" - in broken English. He said, "The persons over you?" I said, "There is no  
5 person over me, mate." And he hung up gently. We became friends after that.

**COMMISSIONER HUNTER:** Yes.

**UNCLE JIM BERG:** Yes, so we had the Murray Black collection transferred to the  
10 Melbourne Museum. The university approached the State Government in regards to being declared a safe-keeping place for ancestral remains, because of the largest collection of Aboriginal material in the world and they didn't want to lose it, and the government had to come to me, because they set up a little committee to overview the request, and I just said "No." So all that material returned back to Country.

15 And I had the honour of sitting down in my office and big Johnny King, big Johnny King, and I mean big, came up and tapped me on the shoulder and said, "Uncle, don't say a word, come with me." And I had the pleasure of going out to La Trobe Street to put the last box of the Murray Black collection on the semi-trailer.

20 It was during those - those periods that the museum had skeletal remains unprovenanced, 38, which represents 38 clans in Victoria. Yeah. Yeah. So they were wrapped up in paper bark, and there was a couple of hundred people marched down Swanson Street for the reburial site. Prior to all of that, I spoke to the Melbourne City  
25 Council, and they said, "Well, you can make a presentation to the full committee about a site." And I went down and sat outside and the gentleman come out and he said, "Are you Jim Berg?" "Yes, yes", "You have got what you want. Pick any spot in Melbourne." And I choose that spot.

30 **COMMISSIONER HUNTER:** King's Domain spot.

**UNCLE JIM BERG:** And I wrote that poem at a very boring meeting and it has the same protection as the Shrine of Remembrance, the same protection, yes. So over  
35 200 turned up, yep. And then the government wanted assistance to set up the cultural Heritage Council, and then that happened. That happened just like that.

**COMMISSIONER HUNTER:** Thank you for sharing that story, because there's not many people that actually know of the - I know you are very modest in how you - but  
40 people know there is remains there but don't know the story behind it and I think it is really important that we share how and why that is a place, because I don't think, one, there is not many mobs that understand that, but also the wider Victoria don't understand that as well. I think that story is important.

**UNCLE JIM BERG:** Oh yeah. The Mildura mob found a site up along the Murray  
45 River, 800 people were there, lying on the sand, exposed on the sand.

**COMMISSIONER HUNTER:** Yes, yes.



**UNCLE JIM BERG:** So they found 3,000 so far.

**COMMISSIONER HUNTER:** Wow.

5

**UNCLE JIM BERG:** Yeah. Saw the young fella yesterday. And straight after that, I wrote a poem 'Where Are You my Children', based on what we saw. I don't like looking at ancestors' remains, not even on TV or even in newspapers. And I had people protecting me.

10

**COMMISSIONER HUNTER:** Yes.

**UNCLE JIM BERG:** Yes, supporting me, out of sight. Yeah, when I wrote that poem on the way back from Melbourne, 'Where Are You my Children', that relates to that burial site. Murray Black, when he was asked to find some Aboriginal remains, went along the Murray River and dug up three burial sites. Several years later, they found Lake Victoria was dry, 10,000 graves, 10,000 - he would have had a ball.

**UNIDENTIFIED MALE:** What about - all the things you have told us about, Uncle Jim. You have lots of things you have been a part of connecting hundreds of people to their Country and community and their family and setting up VALS and Koorie Courts and prisons. Is there one thing you look back on that you are most proud of?

**UNCLE JIM BERG:** Most proud of, yes, my soulmate told me I should look in the mirror each morning and shave and look my ancestors in the eye and say, "Have I done enough?" And I am still doing it, yeah. Yeah. As my grandfather says, "You will get what you deserve", so you've got me today. Yep. So I am happy with what I've been involved in. I'm not a committee person; I'm an individual. I have a set of principles that I keep. My Uncles told me that the best money to spend is the one you earn by your own blood, sweat and tears.

My pop says, "Seek the truth." And my Uncle Banjo says, "If you haven't got a set of principles, you're not a man at all." And as I said, my grandfather said, "You will get what you deserve", and I keep those principles. And when I tell my Uncle Banjo, "I just lost an argument with a friend or with a friend", and he said, "He wasn't your friend in the first place." And if somebody crosses the line, I don't mind being told off one to one, but in a committee, as it happened a couple of years ago, in front of 70 of my peers, I was told off, I cut off and I don't speak to that person again. In my friends, communities know that, they know where I stand, yeah. Yeah, and I stick by it. I hold my head up high. And I can sleep straight each night, yep.

**<THE HEARING ADJOURNED AT 4.19 PM**