



TRANSCRIPT OF DAY 8 – PUBLIC HEARING

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

THURSDAY, 18TH OF APRIL 2024 AT 10.00 AM (AEST)

DAY 8

HEARING BLOCK 6

MR TONY McAVOY SC, Senior Counsel Assisting
MR TIMOTHY GOODWIN, Counsel Assisting
MS BENNETT SC, Senior Counsel for the State of Victoria
MS LAURA HILLY, Counsel for the State of Victoria
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<THE HEARING COMMENCED AT 10.12 AM

COMMISSIONER HUNTER: Good morning and welcome to today's hearing of the Yoorrook Justice Commission. Today we continue the inquiry into land
 5 injustice in Hearing Block 6. And I would mention that Chair Bourke is an apology and will be returning next week. I would take the moment to acknowledge that we are on the lands of the Wurundjeri and pay respect to my Elders past and present, all those that have come before us. We are able here today to have voice. I would like to honour all Aboriginal people in the room and all
 10 Aboriginal people online, all their ancestors, the hard work they have done, the battles they have fought to be able to, again, have voice and be here today. So as I always say, Wominjeka, come with purpose, and welcome to the land of the Wurundjeri. Could I now have appearances please, counsel.

MR McAVOY SC: Thank you, Commissioner, my name is McAvoy. I appear with my learned friend junior, Tim Goodwin, as Counsel Assisting. We thank you for the Welcome to Country, and on behalf of Counsel Assisting, I acknowledge that we are here on the lands of the Wurundjeri people and we acknowledge all First Peoples both here in - online and wherever they may be. Thank you,
 20 Commissioner.

MS BENNETT SC: If it please the Commissioners, my name's Bennett, and I appear with Ms Hilly and Mr Petrie on behalf of the State of Victoria. And in so hearing, Commissioners, I would like to pay my respects and the respects of my
 25 clients to the people - to the Wurundjeri people of the Kulin nation, to thank you, Commissioner Hunter, for that welcome and to express our respects to Elders past and present, to extend that respect to all First Peoples present in the Commission today and watching online. I'd like to acknowledge that sovereignty has never been ceded over these lands. And I'd like to say thank you to the Commission for
 30 the opportunity to appear today. If it please the Commission.

MR McAVOY SC: Thank you, Commissioner. The first witness today is the Honourable Natalie Hutchins MP. It is intended that we will be finished with the Minister's evidence by approximately 3 pm, so we will go past lunch. And I can
 35 indicate that we propose to have short breaks on the hour throughout the course of the day, subject to, of course, the Commission's approval, and I will draw the need for breaks to the Commissioner's attention in due course. Commissioners, I call today's first witness, the Honourable Natalie Hutchins MP, Minister for Treaty and First Peoples. And I note that the witness is in the witness area.

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COMMISSIONER HUNTER: Thank you, Minister.

MR McAVOY SC: Now, Minister, if you can tell the Commissioners your name and position.

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THE HON. NATALIE HUTCHINS: Yes, it's Natalie Hutchins, and I am the Minister for Treaty and First Peoples, the Minister for Jobs and Industry and the

Minister for Women in the Victorian State Government, and the member for Sydenham.

5 **MR McAVOY SC:** Minister, do you undertake to give truthful evidence to the Yoorrook Justice Commission in your evidence today?

THE HON. NATALIE HUTCHINS: Yes, I do.

10 **MR McAVOY SC:** Now, Minister, you have provided the Commission with a statement. Do you have that statement in front of you?

THE HON. NATALIE HUTCHINS: I do.

15 **MR McAVOY SC:** That statement is dated 18 March 2024. Last page, yes, and your signature appears on the last page.

THE HON. NATALIE HUTCHINS: It does.

20 **MR McAVOY SC:** It runs to 310 paragraphs.

THE HON. NATALIE HUTCHINS: Yes, it does.

25 **MR McAVOY SC:** And the content of that statement is true and correct to the best of your knowledge?

THE HON. NATALIE HUTCHINS: Yes.

30 **MR McAVOY SC:** Commissioners, I tender that statement, and it will be given a tender number in due course.

COMMISSIONER HUNTER: Thank you, Mr McAvoy.

35 **MR McAVOY SC:** Now, Minister, I might start with some questions around your term now as the Minister for Treaty and First Peoples. This is your second time around, isn't it?

THE HON. NATALIE HUTCHINS: It certainly is.

40 **MR McAVOY SC:** And your first engagement with First Peoples from a ministerial perspective was in 2014?

THE HON. NATALIE HUTCHINS: Yes, it was.

45 **MR McAVOY SC:** And what role were you appointed to then?

THE HON. NATALIE HUTCHINS: I was the Minister for Aboriginal Affairs.

MR McAVOY SC: And when you came into that portfolio, how would you describe your level of knowledge about First Peoples in Victoria?

5 **THE HON. NATALIE HUTCHINS:** If I may, is it possible to do an opening statement?

MR McAVOY SC: My apologies. My apologies. Yes, you may.

10 **THE HON. NATALIE HUTCHINS:** Yes. Thank you. I had like to begin by acknowledging the Traditional Owners of the lands in which we meet today, the Wurundjeri people, and pay my respects to Elders past and present, and pay my respect to ancestors, leaders, knowledge holders, and all of those past and present. I acknowledge Traditional Owners and First Peoples across the state, everyone
15 viewing this livestream and those who may read the transcript of this historical evidence into the future. First Peoples never ceded their sovereignty over these lands and waters.

When colonisation began, there was no regard for Aboriginal people's occupation, care, or connection to country - no regard. The British Crown claimed legal
20 sovereignty over the lands we call Victoria, even though First Peoples - even though First Peoples were here first. First Peoples in Victoria have maintained their systems of governance and law and spiritual and physical relationships to lands and waters over tens of thousands of years and continue to do so. It's an immense privilege to appear here today before the nation's first truth-telling
25 Commission as Victoria's Minister for Treaty and First Peoples, and something that I dreamed of maybe 10 years ago when I first came to this portfolio.

The Commission has a historic truth-telling mandate of unprecedented scope, and I thank the Commissioners for inviting me to participate in this process. Your
30 inquiries to date have demonstrated the importance of - to all Victorians including future generations, to hear the uncomfortable truths and facts about our state's history. These are truths about colonisation, dispossession, profound injustices, but also a First People's extraordinary resilience, strength, advocacy and resistance.

35 The ancestral ties between Traditional Owners and the lands and waters of this state represent tens of thousands of years of continuous culture. For this entire time, First Peoples have practised culture and care for this country. All Victorians benefit from living this wisdom. When I was appointed as the Minister for Treaty and First Peoples in October last year, having previously held the portfolio in 2014
40 to 2018. It's been my great privilege to see firsthand the progress that has been made during this time building on earlier achievements such as the Aboriginal Heritage Act, the Traditional Owners Settlement Act and the Victorian Aboriginal Affairs Framework and the self-determination embedded in that.

45 This progress has been led by the Traditional Owner groups, by Aboriginal-controlled organisations and representative bodies such as First Peoples' Assembly of Victoria. We're on a path towards self-determination but

we're not there yet. I understand the work we have ahead of us to build strong public record of the facts of Victoria's history, and for all Victorians to deeply appreciate the experiences of First Peoples historically and today.

5 I'd like to acknowledge the First Peoples who have already appeared before the Commission during this hearing block, providing truthful and powerful accounts of the issues of land injustice. From these testimonies, Victorians have heard truths about colonial violence and massacres as well as the reserve system here in Victoria. This violence was brought home in stark terms with the opening of this
10 hearing block taking place at Convincing Ground on Gunditjmara country, the site of the state's first recorded massacre of First Peoples. Could I take - particularly thank Commissioner Lovett and all of the Gunditjmara Traditional Owners for the considerable generosity in hosting on Country at a site that represents so much grief and loss.

15 My witness statement to the Commission seeks to contribute to the historical record by outlining the State Government's role in dispossession of First Peoples and their subsequent exclusion from social and economic opportunities. I'm acutely aware of my responsibility as the Minister for Treaty and First Peoples to
20 continue to support the Commission and First Peoples' Assembly to progress work of truth and Treaty.

I apologise for the acts of my predecessors in causing or contributing to the dispossession and exclusion of First Peoples and for the ongoing impact that this
25 has had. My statement reaffirms the Victorian Government's commitment to self-determination. We cannot build a better future without knowing the truth about the past. The Commission's work shows us how our past continues to impact our present, and it recommends we will inform Treaty negotiations when they commence later this year.

30 Treaty is about making sure First Peoples have decision-making powers and resources for the healthcare and economic opportunities, housing, education, language, and most importantly practice of culture now and into the future. Treaty is about opportunity to bring Victorian communities together, based on
35 understanding and, really importantly, respect. It's about coming to grips with a history we share in creating a better future together.

MR McAVOY SC: Thank you, Minister. You've got some water there? Yes, thank you for that opening statement. As I perhaps prematurely was asking you a
40 few moments ago, in relation to your first stint as the Minister for - as it was then called - Aboriginal Affairs in 2014, are there observations you can make about your level of appreciation and understanding of the issues of First Peoples at that time?

45 **THE HON. NATALIE HUTCHINS:** Yes, certainly, coming into the portfolio not having a long history of working or any history of working in Aboriginal Affairs or for any Aboriginal organisations, I felt it was important to spend some

time listening which I did. I undertook six weeks of visits and meetings when I first came into the portfolio to understand what the issues were facing First Peoples, and to also ask what they - what they thought was a solution. And there was not a single conversation that didn't end with a call for Treaty and truth-telling as - as part of those discussions over that six weeks. And it really, whether I was talking about Closing the Gap targets in health or whether I was talking about access to land by Traditional Owners, I felt that the conversation every single time came back to truth and Treaty, and it really gave me a pathway forward as a new Minister to focus in on what we really needed to do as a state to address the issues and concerns, and to try and redress some of the injustices.

MR McAVOY SC: Can you remember some of the communities and places that you visited during that six-week tour?

THE HON. NATALIE HUTCHINS: I can. I - during that time, I went to Budj Bim for the first time and met with the Gunditjmarra. I spent quite a lot of time in Gippsland, in Moe, in Morwell, from health organisations to gathering places down to Bairnsdale, and a lot of different locations across Metro Melbourne. Regretfully in that six weeks, I didn't manage to get to Robinvale or Mildura, but I did later in the year.

I - I would have a guess that the number of meetings in those six weeks probably went more than 100 meetings and conversations. I learnt pretty quickly that the way forward was to always start with a cup of tea, and ask people how they are before getting into the - into the sad business and the history, and also then discussing what solutions could be.

MR McAVOY SC: In that series of meetings, were there people that you met or events that you can still remember that had any profound effect on you, or gave you information that has stuck with you until today?

THE HON. NATALIE HUTCHINS: I would say pretty much every single one of those meetings had a profound effect on me in a different - different way, different levels. From experiencing the anger of First Peoples, particularly visiting Shepparton and sitting down with Yorta Yorta people, not really understanding the hurt and betrayal that had been forced on them in more recent times in their Native Title claim, not having an appreciation for that until I sat at the table and felt that anger over the course of a good, probably, two hours. But also coming to the realisation also of how - during that period, how real suicide rates are in Aboriginal community. I don't think there was a single group that I met with that weren't touched by suicide in the recent years before me having those conversations, and I have no doubt that the effects of that are still being felt today.

MR McAVOY SC: Looking back now, coming back to the portfolio for a second time, are there any observations you can make about your first term as Minister, and any things that you may have done differently?

THE HON. NATALIE HUTCHINS: If I could have sped up this process to have occurred earlier, both truth-telling and the Treaty process, I - I think I would have pushed harder on the time frames. To be now eight years down the track and, you know, hopefully at the negotiating table later in year, for Treaty, but it would have
5 been - it would have been better had we have had this sooner - had a Justice Commission sooner in this process. That would be the only thing I'd say -

MR McAVOY SC: From that, are we to take that you see the process of truth-telling and the findings of this Commission and its recommendations as
10 integral to the Treaty process?

THE HON. NATALIE HUTCHINS: I would say they are a really important part of the Treaty process. I would say they're even more of an important - important role in terms of the ongoing historical record and also the shaping of future
15 governments' policies and our decision making and policies now.

MR McAVOY SC: Well, in that regard, it might be a convenient time to turn to part 8 of your statement which is paragraph 58, and I might ask the operators to bring paragraph two hundred and - sorry page 58, paragraph 288 of the Minister's
20 statement up on the screen. That part, Minister, is called My Vision for the Portfolio. I'm sure you are familiar with it. In this part of your statement, you speak about your vision for the portfolio, and it's correct that you're expressing your views about injustice and the hopes for - your hopes for the Treaty process; that's correct?

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THE HON. NATALIE HUTCHINS: That's correct, yes.

MR McAVOY SC: I am going to ask you to read through the paragraphs and I will tell you when to stop. Now, we're starting at paragraph 288, and I might have
30 some questions for you as we go. If you could start there. I would be grateful.

THE HON. NATALIE HUTCHINS:

35 "Colonisation involved taking vast lands and waters of enormous value from First Peoples. This dispossession lies at the heart of many of injustices experienced by First Peoples historically and today. Dispossession was justified through an erroneous and deeply-damaging ideology of racial supremacy. We must reckon with the harm that colonial violence inflicted on First Peoples, recognise the steadfast presence and persistent contributions of
40 First Peoples in the face of it and address the ongoing legacies that continue today."

45 "Truth-telling provides an opportunity for us to develop a shared understanding of our history and of the contemporary injustices that persist to guide the reforms needed to address them."

MR McAVOY SC: Thank you, just one moment. Now, in terms of the dispossession, the injustices brought on First Peoples referred to in paragraph 288, with dispossession perhaps being at their heart, do you say that there were other forces at play other than just merely taking the lands of the First Peoples? So at
5 paragraph 288, you say:

"This dispossession lies at the heart of many of the injustices experienced by First Peoples historically and today."

10 The injustices experienced today, do you say that some of them have a different origin other than dispossession?

THE HON. NATALIE HUTCHINS: I think what I mean is - in terms of injustices experienced that the on-flow effect of taking land and some of the -
15 some of the dispossessions that occurred at the time, like the stopping of cultural practices and the taking of language and stopping language, and ultimately the taking of children as well, they were all connected to the taking of land, they were all the flow-on from that.

20 **MR McAVOY SC:** Thank you. In relation to paragraph 290, when you refer to "contemporary injustices that persist", you are referring to loss of land and water and resources?

THE HON. NATALIE HUTCHINS: I am - I am referring to that, but also
25 captured within that is things like racism and systemic barriers that are still faced by -

MR McAVOY SC: Unresolved intergenerational trauma.

30 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: Loss of self-determination.

THE HON. NATALIE HUTCHINS: Yes.

35 **MR McAVOY SC:** Loss of self-governance.

THE HON. NATALIE HUTCHINS: Yes.

40 **MR McAVOY SC:** Delayed implementation of existing commitments.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: If you could continue at paragraph two twenty - 291.

45 **THE HON. NATALIE HUTCHINS:**

5 "The Victorian Government is committed to repairing the reoccurrence of past wrongs and addressing ongoing injustices through self-determination. This is reform of existing legislation and policy, as well as negotiated change through Treaty. I reiterate my commitment to implement changes to the Aboriginal Lands Act of 1970 as recommended by the 2021 review, and to change land related restrictions to the Aboriginal Lands Act 1991 in line with community aspirations. I will work with the Framlingham and Lake Tyres communities to continue to further reform the 1970 Act and bring Framlingham out of administration."

10

MR McAVOY SC: Please continue.

THE HON. NATALIE HUTCHINS:

15 "I will also lead the Government's response to the First Principle's Review and work to make sure that the compensation and rights available to Traditional Owners are just and fair. I look forward to continuing to work with the Aboriginal Heritage Council and other stakeholders to ensure the Aboriginal cultural heritage regime is self-determining and strong. In relation to Victoria's whole-of-government Victorian Aboriginal Affairs Framework, the commitment on the National Agreement on Closing the Gap, I will work across government to address the critical issues of First Peoples control and ownership of their data and measures of success. I will also continue to ensure that priorities put forward by ACCOs and governance forums are prioritised in Victoria and the national stage."

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25

Keep going? Yes?

MR McAVOY SC: Yes.

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THE HON. NATALIE HUTCHINS:

35 "Treaty is agreement-making to ensure First Peoples have decision-making power over their healthcare, their family's housing, their kids' education, the practice of their culture for now into the future. The Treaty process is about coming together to make a practical agreement to change what isn't working, and make sure Aboriginal Victorians can make decisions about their own future. This path to self-determination offers the State a chance to build a more equitable and inclusive Victoria in which all Victorians can take pride."

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MR McAVOY SC: Continue.

THE HON. NATALIE HUTCHINS:

45 "The Government is mindful of the State's obligations to be ready to negotiate treaties that potentially include innovative and more equitable approaches to land and water justice, environmental management, economic

and community development, cultural heritage and Indigenous Data Sovereignty. While the Treaty framework does not place any limitations on what can be negotiated through Treaty, it does specify these topics and a range of others as subject matters for negotiations."

5

"The Victorian Government must also be responsive to the decisions of the Traditional Owners in pursuing formal recognition and must deliver outcomes that meet Traditional Owner aspirations. Traditional Owner treaties will provide a mechanism for Traditional Owner groups to form First People's Treaty delegations and negotiate directly with State for the recognition of inherent rights and their connection to country."

10

"Traditional Owner treaties can progress land justice for Traditional Owners whilst also contributing to regional investment and rejuvenation. At the heart of this approach, there must a critical focus on relationship building and collaboration - collaborative negotiation. This will enable Traditional Owners, the State, local governments and other stakeholders to work together towards a mutually beneficial and just future that benefits all Victorians."

15

"The State has taken significant steps to address the harm it has caused and yet injustices persist. I acknowledge that we have yet to adequately address the prevalence of interpersonal, institutional and structural racism or to fully make aware for true self-determination. The Government is learning from the mistakes of the past."

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MR McAVOY SC: I might just ask you to pause there. I can tell you that the government has, through various witnesses and representatives in these hearings, accepted numerous times that the institutional and structural racism against First Peoples continues to exist in this state, in particularly in Victorian Government agencies. How does the government propose to adequately address racism?

30

THE HON. NATALIE HUTCHINS: Right at this very moment, there is comprehensive work being done by the government on an anti-racism strategy, which is co-chaired by two MPs in Parliament. One of those is Sheena Watt, our member for the Upper House in the northern suburbs who is also working with Aboriginal community across Victoria to ensure that the racism, the daily occurrences, the systematic barriers that are there, are addressed through this strategy. But aside from - from that strategy, that's not far from being launched, there's also been a range of training that has happened across our public service, particularly in the space of truth-telling and the prospect of Treaty making, that we have undertaken, as well as cultural awareness training as well.

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MR McAVOY SC: And is there monitoring that - which is taking place as to whether that training is effective or not?

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THE HON. NATALIE HUTCHINS: I would say that part of the responsibility of our - our secretaries and deputy secretaries across our departments is to ensure that their staff are being trained in those areas.

5 **MR McAVOY SC:** There's no systematic monitoring of the effect of that training at this point?

THE HON. NATALIE HUTCHINS: Look, not to my knowledge, but there is a role for our public sector ombudsman and there may be some roles within that -
10 that person's role.

MR McAVOY SC: Thank you. If you could continue on with paragraph 301.

COMMISSIONER LOVETT: Just in relation to the strategy that's been
15 developed, how much funding was committed to that, to develop the actual strategy? Are you aware?

THE HON. NATALIE HUTCHINS: I'd have to take that on notice. It sat
20 between myself and also the Multicultural Minister, and I don't have a dollar figure in my mind at the moment. And I dare say that some of the resourcing that'll come for that strategy will - not to pre-empt any future budgets, but will be in the future.

COMMISSIONER LOVETT: Probably just important to note that that's not just
25 the racism strategy about Aboriginal people experiencing racism; it's a - multicultural as well.

THE HON. NATALIE HUTCHINS: Yes.

30 **COMMISSIONER LOVETT:** Thank you.

MR McAVOY SC: Paragraph 301.

THE HON. NATALIE HUTCHINS:

35 "We are on the cusp of fuller expressions of self-determination through Treaty and what I hope will be the meaningful realisation of First Peoples' self-determination, taking into account the recommendations from the
40 Yoorrook Justice Commission."

MR McAVOY SC: Pause. Do you have any view as when - as to when it is likely that the first treaty might be entered into in Victoria?

THE HON. NATALIE HUTCHINS: I think the ambitions of both of the
45 Government and the First Peoples' Assembly is we are at the table negotiating by the end of this year, but it is dependent on the processes that have been outlined through our legislation and through the establishment of the Treaty Authority, and

then the processes that involve them inviting us - the parties to the table when all of the requisites have been acquitted.

5 **MR McAVOY SC:** If, with your knowledge of the process, if a Treaty negotiation process commences at the end of this year, what is the likelihood of it being concluded by the next Victorian state election in November 2026?

10 **THE HON. NATALIE HUTCHINS:** I am not going to pre-empt how long negotiations will take, because at this stage we don't have all of the claims on the table, to be honest. That's still a process ahead of us, and I - you know, I am very confident that negotiations will be well under way. If we can reach settlement by then, then that would be a desire of the Government, to see that happen.

15 **MR McAVOY SC:** Thank you. Paragraph 302, please.

THE HON. NATALIE HUTCHINS:

20 "Treaty and truth offer all Victorians - Aboriginal and non-Aboriginal - an opportunity to shape a new relationship and a new future. This an opportunity for a new state identity, an identity based on shared history, including the systemic injustices and deliberate exclusion that prevented First Peoples from practising culture and passing on knowledge as well as denying First Peoples economic social and political opportunities that all Victorians have a right to share in. First Peoples - "

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MR McAVOY SC: Please continue.

THE HON. NATALIE HUTCHINS:

30 "First Peoples' culture is rich and strong. We all have a brighter future if we can learn from Aboriginal culture, practices and ways of working. Victoria will thrive in the future if we can come to terms with the truth of unfinished business of our past. If we come to terms with our past, we can all be a part of a better future. Treaty is a path to getting there."

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40 "It is an immense privilege to be the Minister for Treaty and First Peoples at this moment in time, and I'm deeply indebted to the work of the inspirational Aboriginal leaders and community members who have brought us to this point. I want to express my sincere thanks to First Peoples' communities for engaging in this process and sharing their truths. I'm deeply humbled by the patience and dedication of Aboriginal communities in their pursuit of justice. I am acutely conscious of the enormous responsibility on the State and myself as Minister for Treaty and First Peoples as we work to achieve truth and Treaty. The State must listen to First Peoples and, in turn, bring the broader community along with us. As stated in the Treaty Act, future treaties should enhance the existing laws of this State and acknowledge the importance of culture of Aboriginal identity, bring pride to all Victorians and have a

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positive impact for all of Victoria's society. In other words, Treaty is for everyone."

5 "The process of truth-telling that this Commission has been undertaking necessarily involves the sharing of facts that many find difficult to hear, but responding to facts must involve transformative change. We cannot continue with the status quo, because we know that it has produced injustice. I believe that with a collaboration - a collaborative approach, Victoria will be able to demonstrate the power of transformative - transformation through Treaty. We
10 have been making progress on Treaty since 2016 and we remain committed to this work."

15 "In the introduction of my statement, I refer to my aims as the Minister for Treaty and First Peoples to ensure that all Traditional Owner groups have access to country, that fulfils their right for culture, social and economic aspirations. This is the future where Traditional Owners have access to land for ceremony and culture to build housing, their people, and to generate collective wealth that sustains the communities and contributes to regional economies, a future where Traditional Owners have truly participated and
20 enriched the social, political and economic life of the State."

25 "The State must give due respect to First Peoples' relationships with the land, waters and resources of the State that we all share, and ensure that this relationship is protected and co-exists with other types of public land use. I want to see a Victoria where First Peoples' places of historic spiritual significance are valued by all and First Peoples' culture, knowledge and heritage is celebrated as a foundation of our state's identity. I'm committed to working with Traditional Owners to ensure that First Peoples' knowledge is properly respected and valued to inform State management of lands, waters to
30 the benefit of all. I commit to working towards a future through Treaty where self-determination is not an aspiration, but a reality for First Peoples, a future where First Peoples and the State can come together in partnership, to meet the opportunities and challenges of tomorrow."

35 "Thank you for the opportunity to speak frankly about this unique and complex portfolio and thank you, Commissioners, for your work in ensuring that the truth of First Peoples' experiences is heard and recognised. A collective understanding of Victoria's past and present will enable us to work together towards a better future".
40

MR McAVOY SC: Thank you, Minister.

45 **COMMISSIONER LOVETT:** May I ask a question, please, counsel. Minister, do you accept that there is a deeper level of systemic racism towards Aboriginal people than other multicultural communities, for instance? And I am not trying to take away from the racism that multicultural communities play, but you've articulated here we as a people have a right to lands and waters, and you

articulated there's ongoing systemic injustices towards our people. Do you see and accept that there's a difference in racism that Aboriginal people face in Victoria?

5 **THE HON. NATALIE HUTCHINS:** Yes, I do accept that there's a different level of racism.

COMMISSIONER LOVETT: And that Aboriginal people shouldn't be lumped into a broader bucket of - a broader point that we are different to multicultural communities; we are not a multicultural community.

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THE HON. NATALIE HUTCHINS: No.

COMMISSIONER LOVETT: As First Peoples of this land, I guess, the point I am making, we are not multicultural in that context. We are Traditional Owners, and we have ongoing rights and connections to this country.

15

THE HON. NATALIE HUTCHINS: Yes, I - I acknowledge that.

COMMISSIONER LOVETT: Thank you.

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MR McAVOY SC: Thank you, Commissioner. Minister, thank you for your patience in reading through the final paragraphs of your statement. I suggest to you that by that - the inclusion of those paragraphs in your statement, you are signalling to this Commission and the First Peoples of Victoria and the general public that you will be a champion for Treaty?

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THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: That you are shouldering the burden of leading the Treaty process through the Government?

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THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: You have made many commitments, you have expressed your aims in a way that - where you have not opted today to say that "We, the Government, will do it", but you have made personal commitments. You are saying that "I will do it"; that's correct?

35

THE HON. NATALIE HUTCHINS: Yes, but I make those commitments knowing that I have the full support of the Premier.

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MR McAVOY SC: Now you agree with me that it is very important that for such a profound change as the Treaty process is bringing to this state, that it's important that the Premier of the State have a full level of commitment and leadership on the matter?

45

THE HON. NATALIE HUTCHINS: Yes, that's correct.

MR McAVOY SC: But there also needs to be, within Government, a champion that drives it through - through the Cabinet processes and through the other agencies, and that's you, is it?

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THE HON. NATALIE HUTCHINS: I would say there are quite a few champions across Government, and I have got quite a lot of ministerial colleagues who are very passionate about seeing Treaty come to fruition. I would not say I am the lone - the lone wolf championing this. But certainly -

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MR McAVOY SC: I'm not suggesting - and I'm sorry for interrupting you Minister, I'm not suggesting you are the only one who supports the Treaty process.

THE HON. NATALIE HUTCHINS: Yes.

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MR McAVOY SC: But I am suggesting that processes such as these require people to be at the leadership point within Government, and that person is you?

THE HON. NATALIE HUTCHINS: Yes.

20

MR McAVOY SC: And -

THE HON. NATALIE HUTCHINS: And it is reflected in the title of my ministry. This is the first time.

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MR McAVOY SC: It's not a secret; that's your title. How important, in your role, is the oversight and monitoring of Government performance as against the matters that are essential for the Treaty process?

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THE HON. NATALIE HUTCHINS: I - I would say that's a very big focus, and something that my department in particular is extremely focused on, yes.

MR McAVOY SC: I might just ask you to turn to paragraph 158 of your statement. If we can see that on the screen as well, please, operator. Now, if you could read the first sentence of that paragraph, paragraph 158.

35

THE HON. NATALIE HUTCHINS:

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"While the VGAAR is an important and necessary mechanism for holding Government accountable for how it is delivering on its commitments to enable First Peoples' self-determination, I acknowledge it is currently heavily reliant on departmental self-reporting and therefore lacks independence. I might - "

45

MR McAVOY SC: That is all, thank you. For those who are unfamiliar with government acronyms, what does VGAAR stand for?

THE HON. NATALIE HUTCHINS: It is the Aboriginal - Victorian Aboriginal Framework which incorporates our self-determination framework.

5 **MR McAVOY SC:** I'll think you will find these a different body. This is the Victorian Government annual report on Aboriginal people, the VGAAR.

THE HON. NATALIE HUTCHINS: It - which - yes, sorry, it is linked in with the Victorian Aboriginal Framework. This is the annual report that comes out.

10 **MR McAVOY SC:** And so in reference to that report you say:

"It is heavily reliant on departmental self-reporting and therefore lacks independence."

15 And that seems to be, on its face, an acknowledgment that the agencies within Government, when asked to report upon themselves, can't do so in an independent manner.

20 **THE HON. NATALIE HUTCHINS:** I think sometimes resources and time are a factor in that. I wouldn't say it is necessarily an unwillingness. I'd say that, yes, there is more that can be done.

MR McAVOY SC: And so it is necessary to have some independence in the reporting and monitoring with respect to Government performance?

25

THE HON. NATALIE HUTCHINS: Yes, I would say so, and particularly when it comes to Closing the Gap targets.

MR McAVOY SC: And why is that?

30

THE HON. NATALIE HUTCHINS: I think because, with genuine self-determination commitments that the Government has made, it's not just around consulting and reporting, but it's also around making sure that there is shared power, and that includes monitoring as a part of that.

35

MR McAVOY SC: Is it also the case that with government monitoring itself, the targets under the Closing the Gap reforms have dismally failed?

40 **THE HON. NATALIE HUTCHINS:** That could be a - a big contributing factor, yes.

COMMISSIONER WALTER: Minister, can I just ask you, in this hearing block and the hearing block we had last year, we have heard repeatedly - well, there is been a plethora of strategies and frameworks we've heard about, mostly with nice Aboriginal names.

45

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER WALTER: We had heard about 11 of them, I think, on Monday or Tuesday. I have got a few questions. So with all of those, not a single one to my recollection was actually delivering fully on its commitments. Nearly
 5 all of them were behind, if not even started, and I don't think we had anywhere we investigated - I am not saying there aren't any - where there were proper evaluation and accountability mechanisms built in to the enactment of that framework and sometimes there was not even an implementation plan for that
 10 framework. Are you able to tell me how many strategies and frameworks there are current in the Victorian Government dealing with issues of First Peoples?

THE HON. NATALIE HUTCHINS: To my knowledge, there is about 14. There might -

15 **COMMISSIONER WALTER:** There might be more.

THE HON. NATALIE HUTCHINS: Yes, and there could be more in development that I am unaware of.

20 **COMMISSIONER WALTER:** We have heard 11 just on land and water the other day. We have heard of multitudes around self-determination, around education, around health, around child protection. So I would be thinking more in the 50s and 60.

25 **COMMISSIONER LOVETT:** There's 11 from DEECA alone.

COMMISSIONER WALTER: Would it be possible to find out how many there are?

30 **THE HON. NATALIE HUTCHINS:** And there's two - probably two things we are crossing over on. Some of them are frameworks, and some of them are strategies with actions. There's probably two different sets of documents that we are talking about. I guess I was referring to the more the strategies and actions
 35 part, like Marrung, the education one. But within DEECA, there is - there's a range of just what I'd call just framework documents, which are a little bit different to the outcomes. But I'd be happy to come back to you with a comprehensive list of those.

40 But if I could just make the comment that I have been really proud of some of those documents and been involved in the formation of some of those documents, and in fact some of those documents have led to outcomes where we have achieved a closing of the gap, and I think about the education one in particular.

COMMISSIONER WALTER: With the early childhood?

45

THE HON. NATALIE HUTCHINS: Yes. But I am more than aware that monitoring is a big issue, and I see that some of these documents may even have

the opportunity to be superseded or incorporated into an outcome within a Treaty framework. And within a Treaty framework, we will have monitoring. It will be ongoing monitoring of what is captured in a Treaty.

5 **COMMISSIONER WALTER:** I guess my point is we have got all of these strategies and frameworks that have been in existence, from the education space I have been monitoring them from early 2000 onwards, with huge commitments in them, most of which are not - have not been delivered, or not been delivered fully. I'm just wondering where the accountability of your department is and your role in
10 actually monitoring and keeping a watching brief across all these strategies?

THE HON. NATALIE HUTCHINS: Well, my department sits within the Department of Premier and Cabinet, so there is an accountability, and there are, I guess, reporting and measures at a secretary level. But in terms of a better system,
15 I actually think that Treaty could deliver us something better in terms of ongoing monitoring.

COMMISSIONER WALTER: But isn't the responsibility of government to be doing better now, not waiting for Treaty?
20

THE HON. NATALIE HUTCHINS: Absolutely. Absolutely.

COMMISSIONER HUNTER: Can I just ask, Mr McAvoy, Minister, not only in your statement, previous statements, the frameworks and strategies, the word
25 "self-determination" is constantly there. What does Government mean by "self-determination"? Because I think for community it might mean a different thing. So just understanding, even from your own or Government, what is self-determination?

30 **THE HON. NATALIE HUTCHINS:** I think, I'll tell you what, there was a view for many years before I came to the portfolio self-determination was about consulting. And we've done a lot of work to try and disband that myth and break that down across government and our entities, to say that self-determination is not just about consulting First Peoples; it's about embedding - embedding change and
35 handing over power and handing over resources. And I would go to saying that many of our frameworks and our strategies that we have across Government do go to a part of that, but maybe not far enough, and maybe don't have allocated, upfront resources against those commitments. And that might be where part of the struggle has been to continuously, I guess, deliver on those.
40

COMMISSIONER HUNTER: Can you have part self-determination, though?

THE HON. NATALIE HUTCHINS: No, you can't have part self-determination. You can't say, "Because I've informed as a minister - I've informed a First Nations
45 or Traditional Owner group, I've informed you, I've talked to you about it but I have made no decisions that are in partnership with you, will give you power or outcomes", then that - that's not self-determination.

COMMISSIONER LOVETT: Minister, can I ask you, beyond the establishment of the First Peoples' Assembly and Yoorrook and the Treaty Authority, those architecture, what are some of the areas that you think has been - Government
 5 have delivered on self-determination? What's some of the things that come to your mind where they have, beyond the ones I just said then?

THE HON. NATALIE HUTCHINS: Yep. It's kind of "how long is a piece of string", but from my knowledge I would - I don't have a list in front of me, but just
 10 from my experiences, I would say the operation of First Nations, kind of, sports clubs through to kinders, through to languages being delivered in schools, at the heart of all of those was a self-determination process, to deliver those. In terms of lands, if - if we want to talk about that, I would argue that some of the processes we have in place now in terms of Traditional Owner Settlement Act, do deliver
 15 outcomes of self-determination. I know that there will be, you know, probably opposing views from some Traditional Owner groups, but there would be some who say, "Yes, we have been able to achieve some of that there." So I think the ultimate self-determination, though, is going to be through a negotiation of Treaty and ongoing independent body.

COMMISSIONER LOVETT: I think we've heard pretty loud and clear, Minister, there is a lot of tension out there for everything having to wait for Treaty, and Government Ministers and bureaucrats articulating they haven't
 25 transferred power and resources to the community. I think it's just on our minds trying to understand how much power and resources and authority has actually been transferred over. We have heard of broken systems being transferred and that's been articulated as a form of self-determination or where Government thinks they are giving over control, but it's very much a broken colonial system. So it's good to hear your perspective on self-determination.

THE HON. NATALIE HUTCHINS: And I don't - I don't think we should shy away from the fact that in fact having secretaries and having lead people from our departments and having Ministers here at this Commission is making a difference
 30 to the thinking and approach to self-determination.

MR McAVOY SC: Thank you, Commissioners. The question I want to take you back to, Minister, is in relation to reporting and monitoring. I understand from your answer about the hope that something might develop through the Treaty
 40 process is an invitation to the government and the First Peoples to be innovative in the way in which mechanisms might be developed to ensure that there is proper monitoring and evaluation of Government performance. Is that correct?

THE HON. NATALIE HUTCHINS: Yes. I mean, being quite aware of how the New Zealand model, the Treaty of Waitangi operates, and knowing that there is
 45 already processes around the world in other countries, but they're one in particular of having an ongoing monitoring role of Treaty, all treaties, is a really important element for delivery, yeah.

MR McAVOY SC: Do you accept, though, that there's a role for an administrative monitoring body as well?

5 **THE HON. NATALIE HUTCHINS:** Yes, I do.

MR McAVOY SC: It can't be left to formal complaints and litigation to ensure that an agency performs its obligations under a treaty.

10 **THE HON. NATALIE HUTCHINS:** No, I see, rather than litigation being an outcome of that, that mediation and some authority for the - for the body that is doing that work, to be able to approach any entity that is part of - that is meant to be delivering on that outcome to be - to be interviewed, discussed, mediated outcomes.

15

MR McAVOY SC: This topic is one which will come to the fore in Treaty negotiations, you expect?

THE HON. NATALIE HUTCHINS: Yeah, I do.

20

MR McAVOY SC: I just want to turn your attention to the question of First Peoples' disadvantage.

THE HON. NATALIE HUTCHINS: Yes.

25

MR McAVOY SC: And discrimination against First Peoples. So perhaps continuing on from Commission Lovett's observations, do you accept the proposition that for non-First Peoples, and perhaps particularly so for government officers who are non-First Peoples, that the effects or the causes of discrimination and disadvantage sometimes have to be explained to them because of their perspective? They are unable to see how a particular policies or actions affect First Peoples?

30

THE HON. NATALIE HUTCHINS: Absolutely I do, and I think that is a huge failing of our history and education system.

35

MR McAVOY SC: And do you also accept that First Peoples are more acutely aware of institutional and structural discriminatory conduct against them?

40 **THE HON. NATALIE HUTCHINS:** Are they acutely aware? Yes. Yes. Do they always take action? No, because quite often they don't have the capacity to do that.

45

MR McAVOY SC: Do you believe that there - this is an open question. Do you think that there is a resistance within Government or Government agencies to oversight in relation to Treaty, particularly independent oversight by First Peoples?

THE HON. NATALIE HUTCHINS: I think there is still more work - I wouldn't make the judgment that there is resistance. I would say that there is more work that needs to be done for better understanding.

5 **MR McAVOY SC:** And as Minister, your - part of your role is to take the Government down that path to ensure that they get access to the materials that will give them the information?

10 **THE HON. NATALIE HUTCHINS:** Yep, and - and the demonstrated leadership.

MR McAVOY SC: Has there been discussion within Government about oversight of performance in the Treaty space by First Peoples in addition to the Treaty Authority?

15

THE HON. NATALIE HUTCHINS: Sorry, can I get you to repeat that?

MR McAVOY SC: Yes. Has there been discussion within government about oversight of performance of the Treaty processes by First Peoples in addition to the oversight by the Treaty Authority? So I'm not suggesting by the Assembly, but more generally by First Peoples?

20

THE HON. NATALIE HUTCHINS: Look, I can't - I'm a bit concerned about talking what is being discussed inside the Cabinet Room, but I can say that this is certainly been a consideration of the leaders across our public service, when they've come together to talk about Treaty and self-determination.

25

MR McAVOY SC: I think you've given us our answer anyway, Minister. Do you - do you think, without speaking about the Cabinet discussions, that there is general support for First People oversight of the Treaty processes, so that agencies and agency heads are answerable to First Peoples about their performance?

30

THE HON. NATALIE HUTCHINS: Yes, I do.

35 **MR McAVOY SC:** Now, I would ask you, Minister, at this stage, to have a look at a document for us. Perhaps your counsel provided you with the article from - yes, it is a convenient time. Before I move on to the next item, we should take a break, Commissioners, a five-minute break, if that is suitable.

40

COMMISSIONER HUNTER: Yes, that's fine. Accept that.

COMMISSIONER LOVETT: Yes.

COMMISSIONER HUNTER: Yes.

45

<THE HEARING ADJOURNED AT 11.05 AM

<THE HEARING RESUMED AT 11.14 AM**COMMISSIONER HUNTER:** Thank you, counsel.

5 **MR McAVOY SC:** Thank you, Commissioners. Minister, just before the break, I was going to take you to an article from The Age newspaper; this is an online printed version of it from 3 May 2024. Do you have a copy of that in front of you?

10 **THE HON. NATALIE HUTCHINS:** I do.

MR McAVOY SC: Can we have a copy of that on the screen, please, operators. Just for context, this is an article from 3 May 2024, and your statement to Yoorrook was dated 18 March 2024, so perhaps two weeks later.

15 **THE HON. NATALIE HUTCHINS:** Mmm-hmm.

MR McAVOY SC: Now, this article is in relation to the report delivered by Yoorrook titled Yoorrook for Justice, and you can see a copy of that report on the front page of that printed article.

20 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: And there's comments in that article from the Assembly - First Peoples' Assembly of Victoria co-chair, Mr Rueben Berg, and there's also
25 comments from Ms Nerita Waight. And then if you go to the third page of that document, at the bottom below your picture, it says:

"She - referring to you - rejected suggestions that the response from government showed the government was not listening."

30 Do you accept that that adequately contextualises this document?

THE HON. NATALIE HUTCHINS: Yes, that's my quote.

35 **MR McAVOY SC:** Yes. And then there's a quote from you which goes across the bottom of the page over to the next page, and then a further short piece from you. Can you just read that to yourself. Yes.

40 **THE HON. NATALIE HUTCHINS:** Read it out loud?

MR McAVOY SC: No read it to yourself.

THE HON. NATALIE HUTCHINS: That quote, "I understand"?

45 **MR McAVOY SC:** I want you to read the words attributed to you going over that page and the fourth page. Just read them to yourself, because I want you to tell us

whether you - they're the words that you said. Because newspapers can sometimes get these things wrong.

THE HON. NATALIE HUTCHINS: Yes, I did say that.

5

MR McAVOY SC: Okay. Can you turn back to the bottom of page 3 starting with the words, "I can understand". Can you read for the Commissioners that quote.

10 **THE HON. NATALIE HUTCHINS:**

"I can understand people have had to battle the effects of colonisation for more than 200 years, that they want a quicker solution to some of the problems that we have talked through, and brought to the surface. I understand the frustrations, but we have an obligation as a Government to the Victorian people to make sure we get the laws and changes and policy settings right, and that's why we are going to take the time to do it and get it right."

20 **MR McAVOY SC:** Minister, I suggest to you that those words, particularly the last sentence - last two sentences, are not the words of a champion of the Treaty process.

THE HON. NATALIE HUTCHINS: Well, I would disagree with you.

25

MR McAVOY SC: Minister, you're familiar with the term, "command and control".

THE HON. NATALIE HUTCHINS: I am.

30

MR McAVOY SC: And you understand that it means that it is a reference to Government using - particularly with respect to government power, Government using its power in making decisions flexing its power notwithstanding the impact or views of others?

35

THE HON. NATALIE HUTCHINS: No, I - that is a reflection not on - my - my comments are not a reflection on the recommendations of the Commission being right or wrong. My comments are a reflection on government being able to deliver and making sure that they deliver in the right way is - is what my comments go to.

40

MR McAVOY SC: I will put it to you this way, Minister. On reading those comments, it would appear to any person reading it - reading those comments that you are telling the people that were complaining about the government response, being the First Peoples' Assembly, the Yoorrook Justice Commission, that the Government knows best and that it will make its own decisions about these matters?

45

THE HON. NATALIE HUTCHINS: No, that is not the intent of the quote. That has never been my intention. My comments are about the Government being able to deliver it in the right way, the outcomes that were suggested.

5 **COMMISSIONER NORTH:** Minister, can I ask you this question. You start by saying that you understand the frustration of people. And do I understand you to mean by that the lack of movement is actually causing suffering in the indigenous community by reason of Government or progress being slow on these matters?

10 **THE HON. NATALIE HUTCHINS:** I think there's - there's harm happening to Aboriginal people as a - as an effect of colonisation, that we are trying to address 200 years' worth of damage and destruction in numerous months is probably not realistic.

15 **COMMISSIONER NORTH:** No.

THE HON. NATALIE HUTCHINS: And what I am saying is - is that out of 46 recommendations, 43 were either supported or supported in principle, or under consideration, and the reason we've had to do that is to make sure the
20 government's response is right.

COMMISSIONER NORTH: Sure. But I am just trying to understand the concept or understanding you have of the effect of delay, and wondered if it - it was the same as what I've gleaned from even the short time of hearing evidence on
25 the Commission that this is actually an everyday lived suffering. It is - is that the way you understand the way many in the Indigenous community feel? This is a lived history on a daily basis.

THE HON. NATALIE HUTCHINS: Yes, with the justice system, yes, with
30 child protection, yes.

COMMISSIONER NORTH: And in relation - we will probably get to it - land and water injustice as well?

35 **THE HON. NATALIE HUTCHINS:** Yes.

COMMISSIONER NORTH: Because it's certainly a strong impression I have got, and it becomes very clear when you hear enough Indigenous people talking about their current situation. So with that understanding, I'm just wondering why
40 the proper response to any sort of question of timing of change is not to actually give specific end dates. In other words, would not, in the light of that understanding, it have been better to have given some sort of a timetable as to when the outcomes could be expected? Because this is entirely open-ended, isn't
45 it?

THE HON. NATALIE HUTCHINS: I did commit to bringing an implementation plan around these, both back to Cabinet and providing that to the Commission as well. And I did state that in the press conference that I made -

5 **COMMISSIONER NORTH:** Sure, but it's the "when". And what I am suggesting to you is that, against the background of the sensitivity of Indigenous people, isn't it important to actually provide clear definition, rather than - we want to get it right so we need to take time. I mean we - we - I am saying the Indigenous community with that sensitivity has no idea about what the timeline is.

10

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER NORTH: And I'm not - I'm really not trying to focus on the Commission earlier reports, but rather a general proposition.

15

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER NORTH: Is it not important in the context of your ministerial responsibilities to be clearer about time definitions?

20

THE HON. NATALIE HUTCHINS: It is, but sometimes those time definitions are not my call in terms of the system of legislation and its passing into Parliament. We can - and saying with the positions at Cabinet. So I can say I estimate to have done this by X months, and the process does not back me up in terms of the parliamentary flow of legislation or the time frames that things need to go through Cabinet. And - and unfortunately that is the reality. And there is - there is an opportunity for me to nominate some dates, and then if they are not met, I am - I'm just letting people down. So there is - there is a commitment that I have given to come back with a full implementation plan by the end of the year. Now, I'd like to do that sooner, but whether the processes allow me through the Parliament - and that is not just a position that Government can commit to because there are other parties in the Parliament that change our timetables.

25

30

COMMISSIONER NORTH: I am really very interested in the issue of delay in the implementation, which we will touch on, I'm sure, later on. You have given us one insight into how difficult it is, as I know, the whole process of Government and getting legislation drafted and into a legislative program and so forth, but the problem is that if you've got people who are daily suffering the consequences of a failure to act, then isn't it necessary for those processes to be changed?

40

THE HON. NATALIE HUTCHINS: Yes, there is a sense of urgency, yes, there is.

45

COMMISSIONER NORTH: Precisely. But how do - I know I'm thinking of our recommendations. How is it can we make recommendations that actually reflect that sense of urgency? Because if we simply sit back and say, "The process of government is the process of government, and that's just too bad and everyone is

caught up with that." This is, and I think have you accepted, a very particular area of sensitivity and it might just not be appropriate to say, "Well, there is a legislative cue and that is the way it is and - "

5 **THE HON. NATALIE HUTCHINS:** I think it goes back to what kind of - every single report that Government has - has to respond to in this space and in any space, and that is there is not an independent mechanism for following up on this. And I think that actually the pathway we're on with Treaty is actually going to deliver us that sort of mechanism to help us implement things in a timely manner.
10 I think that's - and it sits outside - once we have some legislation, it sits outside that process or is regulated by that process. But right now, we don't have that, and that's become evident more and more to me in reviewing the evidence that has come to this committee and in preparing for today, just how much that is something that - that we need.

15 **COMMISSIONER WALTER:** Just to reiterate an earlier point, surely we shouldn't have to wait for Treaty for Government to deliver on the commitments that it makes itself.

20 **THE HON. NATALIE HUTCHINS:** Yes. And we've made - we've made some commitments in response to the first set of recommendations from Yoorrook.

COMMISSIONER WALTER: I'm talking more about all the other strategies and all the other things that aren't delivering.

25 **THE HON. NATALIE HUTCHINS:** Yes.

COMMISSIONER WALTER: Surely we shouldn't have to have a treaty to actually have Government take responsible for enacting the obligations it itself has made.

THE HON. NATALIE HUTCHINS: Yes.

35 **COMMISSIONER LOVETT:** I think from myself here as well, in the response about the - you can understand the effects of colonisation from more than 200 years ago. But, Minister, we did hear in the last round of evidence in criminal justice and child protection, I think it may have been the Attorney-General - if it wasn't the Attorney-General it was someone from - one of the secretary or deputy secretaries from justice - confirming that the Government in making those bail reform laws understood that it would have a disproportionate impact on
40 Aboriginal people receiving bail. So, again, trying to give confidence around implementation, whether it be our recommendations or things moving forward, knowing as well, at that point in time, the Government knew that those laws why going to have a disproportionate impact to have further embed our people in the
45 system.

THE HON. NATALIE HUTCHINS: It's - it's - yes, it's a government policy that caused a little bit of debate.

MR McAVOY SC: Minister -

5

COMMISSIONER HUNTER: Mr McAvoy, can I - on Commissioner North's point about recommendations and timeliness, we as a Commission have had to gain trust of community around a Royal Commission, and everybody has said, "Another Royal Commission." And again, not - there's nothing really committed to. Do you feel it's already an injustice for our people who are coming forward telling their truth to read those comments? And I will point out Rueben Berg's comments under:

10

15 "The Aboriginal people are all too familiar with the promises written in the sand. So the assembly will be looking to hold the government to those in principal comments with the next round of truth-telling recommendations. We will be wanting evidence focused outcomes to be locked in so there's no wriggle room."

20 I think it is the first, "We are all too familiar with promises written in the sand."

THE HON. NATALIE HUTCHINS: Mmm-hmm.

25 **COMMISSIONER HUNTER:** As the Minister, what - how do we keep getting people to continually tell their stories? This isn't the first time they have told them when they come. We have all worked in community and you have heard them.

THE HON. NATALIE HUTCHINS: Yes.

30 **COMMISSIONER HUNTER:** How do we continue the hope for our people for justice?

35 **THE HON. NATALIE HUTCHINS:** And the quote you just used around the writing commitments in the sand is the very reason I've been very guarded in making sure that our commitments are not written in the sand and blown away, that they are written in concrete and they are etched in rock that they can continue on and be delivered in. And sometimes when governments just respond to recommendations and inquiries and say, "Okay, yep, in principle, we accept them all", you will find seven or 10 years later that hasn't happened. I mean, we have
40 seen that with the Aboriginal Deaths in Custody Royal Commission. And we want to make sure that the recommendations that come out of this are not just dealt with within Treaty. Treaty will be a major component.

45 All the reports that have been - and strategies and frameworks and have been committed with Aboriginal people across Victoria over many, many years now are picked up and captured, you know, potentially within a Treaty process, going forward. Now, that might not be the first statewide treaty. That's why we have

always said "treaty" or "treaties", because it gives us potential to lock in a mechanism to measure and deliver and hold accountable the commitments that come out of Treaty.

5 **COMMISSIONER HUNTER:** So you've got an implementation plan or you are going to produce one. So when could you commit to that being -

THE HON. NATALIE HUTCHINS: In terms of the Yoorrook -

10 **COMMISSIONER HUNTER:** Yes.

THE HON. NATALIE HUTCHINS: - first recommendations, by the last quarter of this year.

15 **COMMISSIONER HUNTER:** Thank you.

MR McAVOY SC: Minister, in your words that are quoted in the article, the emphasis seems to be on the obligation of the Government to make sure that it gets the laws and changes and policy settings right. You accept, though, Minister, that the Attorney-General came to this Commission and was cross-examined for a day, asked questions about reform of the bail conditions which were so terribly affecting the First Nations - First Peoples communities in Victoria. It's not an issue that has taken the Government by surprise, is it?

25 **THE HON. NATALIE HUTCHINS:** No.

MR McAVOY SC: The Government is well aware and has put great levels of work into understanding the deficiencies and the need for bail reform?

30 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: So to say on 2 April or 3 April that "we need to make sure we get the changes and policy settings right", it gives you the impression you will haven't thought about it before that point, but that's not the case, is it?

35

THE HON. NATALIE HUTCHINS: That is not correct. Of course we have thought about the change that is required. That was directly in response to the detail of the recommendations that have come out of Yoorrook.

40 **MR McAVOY SC:** If you turn to the next page of the article, the Chair, Yoorrook Chair Professor Eleanor Bourke, midway down the page said:

"Commissioners expected to see progress on the 15 recommendations still under consideration."

45

And she is quoted there:

5 "Given the weight of evidence presented throughout the inquiry which included deeply personal accounts from First Peoples witnesses of suffering which many continue to experience every day, Commissioners are disappointed by the Government's decision not to support three recommendations. These recommendations were not made lightly. They go to the heart of addressing ongoing injustice for First Peoples."

10 And I suggest to you that hearing the questions from the Commissioners today, it only re-enforces the impact of the suggestion that the Government's not ready to proceed on these matters. It's a further denial of First Peoples, is it not?

15 **THE HON. NATALIE HUTCHINS:** No, I don't agree with you. I'd say having a positive position on 43 out of 46 recommendations and then a realistic way forward that the Government has identified those recommendations in breaking them down, is a realistic approach, and I just go to those 15 that are under consideration. What we mean by that is that there is further policy and legal analysis and drafting that needs to happen from the Government's perspective in regards to those.

20 **MR McAVOY SC:** You're not suggesting to this Commission that it's a numbers game, Minister, are you, that they should be satisfied because the majority of things have been supported. That is not what you are saying, is it?

25 **THE HON. NATALIE HUTCHINS:** No.

MR McAVOY SC: No. Each of these recommendations deserves to be dealt with on their merits; that's correct, isn't it?

30 **THE HON. NATALIE HUTCHINS:** They do, yes.

MR McAVOY SC: And what is happened in your response, you have conveyed to the Victorian First Peoples and this Commission that the Government will get to it when it's ready?

35 **THE HON. NATALIE HUTCHINS:** No, no, the Government is already getting on with the work that needs to be done around responding in detail and implementing the recommendations that we have said we will support in full and doing the further work around the - those that are identified in principle and under consideration.

40 **COMMISSIONER HUNTER:** Can I just ask that, while the Government is doing that, can they take into consideration the high rates of child removal, the deaths in custody, ongoing trauma of our people. Because while we're waiting, I can reassure you that a child this morning has probably been taken. And if that
45 can't be taken into consideration, I don't know why we're here.

Because we have to face these people, our people, who have been dispossessed, constantly traumatised. And as Mr McAvoy has just said, these aren't just words on papers and it shouldn't be a numbers game. These are our people and we don't take our job very lightly and we have to sit here every day and hear the trauma again and again. And I hope that government takes into account every child that is removed daily from their hospitals, from their homes, from their parents, and I pray to God - not that I even believe in him - that another - there is not enough death in custody that we have to sit here and listen to the families again. So if government could take those into consideration - you can understand our frustration, and it's not just mine.

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER HUNTER: It's our people's. And you have heard it, I have heard it, and I just wanted to reiterate that. Thank you, Mr McAvoy.

COMMISSIONER NORTH: Minister, I am wondering if it is accurate to say that this might be a problem of communication, because - and it implies generally that the expressions that you have made and other Ministers have made are faultless in commitment, and I accept that those are genuine commitments, but when, then, you get in effect a lack of apparent action, it really shatters the foundation of trust that this is a series exercise.

Now, you have set up this Royal Commission. That's an indication of seriousness; you don't do that every day. Yet it is six months before there is a communication about what is going to be done and then it is in sort of the vaguest terms. Now, I would expect that internally there is much more definition about where you are going and what the thinking is, and I'm just wondering, if that assumption is right, whether the problem is not sufficiently sharing that, because I'm continuing to look at the distance between the faultless statements of policy and then the result of it, and I keep asking, well, why - accepting that the statements are genuine, why is it for instance, and I am not very keen to drill down, you know, the work that this Commission's actually done because there are plenty of other examples which we will get to, but here we have Government expressing all the support that Indigenous people could ever want -

THE HON. NATALIE HUTCHINS: Mmm-hmm.

COMMISSIONER NORTH: And rightly so, sets up a Royal Commission with all the attendant solemnity and cost involved in that, and then the report is delivered. It takes six months before there is a response, and it is in the broadest terms. Now, maybe you can share with us that there's more substance to the response, but absent that, it looks really discordant with the seriousness of the problem and the actions and the statements of commitment.

THE HON. NATALIE HUTCHINS: I don't - I don't think there is a question around commitment. I think there is always a question - and when, you know,

when we come back to the kind of definitions of self-determination we get to the heart of where we - you know, in the flow chart of self-determination, we get through the kind of first five things when it comes to change, but then when we get to handing over of power and resources, that is always the brick wall. That is always the hard part. And I would say that it is still a journey that governments and departments are still on, and quite frankly, getting those decisions made and that really significant change made, particularly of recommendations 1 and 2 that were handed down, and some other - other really big decisions that are in our frameworks and strategies, that handing over power and resources is a tough thing.

And don't think that our Government sat on a report for six months and didn't debate it. That is certainly not the case. We did - we did, at many levels, talk through all of the recommendations. I quite frankly did not want to come to this Commission and not have a response out there. Now, it may not be to your satisfaction and I understand that because you're - as you have said Commissioner - you have said that you have got to face people - you have all got to face the people who are most affected by this all of the time. But I want to give you the confidence that, with a bit of time, some change will happen, and power will be handed over in these spaces, and that is something that I am very committed to - and not just me, but the Premier as well.

COMMISSIONER LOVETT: You're confident that will be able to happen through the Treaty process, Minister?

THE HON. NATALIE HUTCHINS: I am, yes.

MR McAVOY SC: Thank you, Commissioners. If you can just turn to paragraph 21 of your statement, please, Minister. In that paragraph, you observe:

"I recognise that First Peoples of Victoria - that First Peoples in Victoria were not dispossessed of their lands by the idea of terra nullius alone".

You're not a historian, are you?

THE HON. NATALIE HUTCHINS: No, no, I smile because the one A-plus I ever got in my life might have been on this topic.

MR McAVOY SC: Are you telling me you'd like to be cross-examined on this history of Victoria?

THE HON. NATALIE HUTCHINS: On my year 11 essay, no, I don't want to be.

MR McAVOY SC: Yes. And you're not a lawyer.

MR McAVOY SC: No, I'm not.

MR McAVOY SC: So somebody's assisted you with this idea that the First Peoples of Victoria were dispossessed by the idea of terra nullius.

5 **THE HON. NATALIE HUTCHINS:** I think - I think - I don't need a legal briefing on this. I've had plenty of conversations directly with First Peoples around the culture and history that was here before settlement, to know.

MR McAVOY SC: So that is the basis for your understanding?

10 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: I suggest to you that the notion of terra nullius was something that was brought to the colony pretty much after all of the dispossession had taken place in Victoria and it was an excuse used after the fact, and I don't expect you to
15 be able to respond to that, but I put it to you anyway.

THE HON. NATALIE HUTCHINS: I - I go on to say that terra nullius is a fallacy, and -

20 **MR McAVOY SC:** Yes, I understand that, but what I'm suggesting to you is that it wasn't the basis upon which the dispossession took place in Victoria in the first place.

THE HON. NATALIE HUTCHINS: No, I don't believe that that was the sole
25 reason, no.

MR McAVOY SC: It wasn't the reason at all, is what I am suggesting to you.

THE HON. NATALIE HUTCHINS: Yes.
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MR McAVOY SC: It is a principle that was brought to Victoria some time after most of the dispossession had been done.

THE HON. NATALIE HUTCHINS: Yes.
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MR McAVOY SC: So I put that to you so that we are clear on that point. Now, you recognise in that paragraph that:

40 "Private settlers and colonial authorities used violence to establish control over First Peoples' lands and waters and forcibly removed people to make way for the Europeans."

Yes?

45 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: Then you refer to the Royal Commission into Aboriginal Deaths in Custody which took place in - which the final report was handed down in 1990.

5 **THE HON. NATALIE HUTCHINS:** Mmm-hmm, yes.

MR McAVOY SC: So we move from the initial stages of the colony to the 1990s where we are looking at the over-incarceration and high rates of death of Aboriginal people in custody.

10

THE HON. NATALIE HUTCHINS: Yep.

MR McAVOY SC: And we come to today where there are recommendations from this truth-telling Commission about how numbers of people incarcerated might be reduced and how the suffering of Aboriginal people might be reduced, and it's a fair proposition, isn't it, to say that this is just a continuation of what started when the British first arrived on these shores?

15

THE HON. NATALIE HUTCHINS: I think it's a - it's important to acknowledge the ongoing effects of what happened when the British arrived on these shores and how they are still - the dispossession and the trauma is still evident today.

20

MR McAVOY SC: No, I'm saying to you that the effects are still occurring. So that it is still - the process of colonisation is still -

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THE HON. NATALIE HUTCHINS: Yes. Yes, we -

MR McAVOY SC: - being rolled out against First Peoples.

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THE HON. NATALIE HUTCHINS: Yes, we have white-based laws, yes.

MR McAVOY SC: Thank you. One moment, please, Commissioners. So one view of the Treaty process, Minister, might be that the failures of the original colony are being sought to be put right through entry into present day treaties, when they're the things that ought to have been done at the outset.

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THE HON. NATALIE HUTCHINS: Yes, it's definitely an attempt at addressing injustice.

40

MR McAVOY SC: And in order to address that injustice, is it the Government's view that First Peoples need to be put as best as possible into the position they would have been had they been treated with - lawfully and with dignity in the first place?

45

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And so it's from that foundation that the Treaty process is being launched, is it?

THE HON. NATALIE HUTCHINS: Yes, that's the foundation.

5

MR McAVOY SC: And it's in recognition that the First Peoples of Victoria were here with their own systems of law and government and connections to land, ownership of land and waters prior to the arrival of the British.

10 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: That under First Peoples laws and customs, they still possess those rights and still exercise in accordance with those systems of laws and governance.

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THE HON. NATALIE HUTCHINS: Sorry, can I get you to repeat that.

MR McAVOY SC: It's accepted that First Peoples in Victoria still operate and observe their systems of laws and governance and still maintain their connections to land?

20

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And part of the Treaty process is trying to bring the Western system that the colony of Victoria had brought to this place into line with a more equitable accommodation of those laws and customs and governance?

25

THE HON. NATALIE HUTCHINS: Yes, and to support the reconnection of those laws and customs.

30

MR McAVOY SC: In your statement, you have referred to killings of First Peoples by government agents and other actors. In this hearing room, we heard evidence from Dr Bill Pascoe about the various massacres that occurred in this colony, this State, many of which were committed by non-state actors, private citizens. In making your statement, are you seeking to distinguish the Government for - in terms of its role in the deaths of those people from those which were committed by private citizens?

35

THE HON. NATALIE HUTCHINS: Am I - did you say am I trying to distinguish or extinguish?

40

MR McAVOY SC: Distinguish.

THE HON. NATALIE HUTCHINS: No, I - look, I think any atrocities to that level are caused - that were murders and deaths during that time even by a third party, they're still a State Government responsibility to have enforced the law. And murder is against the law, and I think certainly there was a failure by governments

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at the time, and depending on which time frame you are talking about, whether it was the State Government or - or a Commonwealth entity, failed to protect our First Peoples.

5 **MR McAVOY SC:** Thank you. And so these are matters that are properly within the ambit of any Treaty negotiations as between the State of Victoria and First Peoples?

10 **THE HON. NATALIE HUTCHINS:** Certainly discussing the State's failure or the Commonwealth's failure at the time to protect First Peoples is absolutely something that's on the agenda. If you are asking me to commit to what dates they are, I can't - I'm not a lawyer and I probably need to get -

15 **MR McAVOY SC:** I haven't asked you that question, Minister.

THE HON. NATALIE HUTCHINS: Yes.

20 **MR McAVOY SC:** In addition to the use of various mechanisms including terra nullius to avoid payment of compensation to First Peoples in Victoria, there has also been a - windfall gains, if I can put it that way, to the colony and the State by reason of the sale of lands.

THE HON. NATALIE HUTCHINS: Mmm-hmm.

25 **MR McAVOY SC:** The keeping of wages of people who were subject to protection legislation, the fruits of the resources, the royalties, the lease payments, all of those matters have increased the State's accounts. You would agree with that?

30 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: That all came as a result of this notion that the colony or the State could avoid payment of compensation to First Peoples.

35 **THE HON. NATALIE HUTCHINS:** I can't talk about the thinking of previous governments, but I would assume that that was part - yes, part of the reasons for those decisions, yes.

40 **MR McAVOY SC:** And you - sorry - did you hear the evidence from Minister Dimopoulos earlier this week?

THE HON. NATALIE HUTCHINS: Only parts of it.

45 **MR McAVOY SC:** Were you made aware of the evidence in relation to the admission of the way in which the legislation was passed in order to avoid - avoid payment to First Peoples?

THE HON. NATALIE HUTCHINS: I - if I could clarify what piece of legislation or the time -

5 **MR McAVOY SC:** Sorry. I will come back to that question. I just need to make sure it's right for your purposes.

THE HON. NATALIE HUTCHINS: Yep.

10 **MR McAVOY SC:** I want to make sure the question is fair. You're aware of the issue that was covered in the papers about a \$2 billion avoidance by the State.

THE HON. NATALIE HUTCHINS: Yes.

15 **MR McAVOY SC:** Yes, you are.

THE HON. NATALIE HUTCHINS: Can I recall - this is in regards to forestry?

MR McAVOY SC: It is.

20 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: Have you been briefed on that matter?

25 **THE HON. NATALIE HUTCHINS:** No, I haven't.

MR McAVOY SC: I suggest to you that it was accepted by Minister Dimopoulos that it appeared from the material produced to the Commission that action was taken for the purpose of avoiding liability to First Peoples in Victoria. Do you accept that?

30 **COMMISSIONER NORTH:** This was the setting of the threshold of the point that could never be reached, do you mean?

35 **MR McAVOY SC:** Yes. So this occurred in 1994.

THE HON. NATALIE HUTCHINS: Yes.

40 **MR McAVOY SC:** And the particular piece of legislation, the Plantations Corporation Act, was - the important date was the commencement of the Native Title Act, and the briefing was very clear that the action ought to be taken by the government in order to avoid the operation of the Native Title Act. Does that sound familiar to you?

45 **THE HON. NATALIE HUTCHINS:** Yes, it - I do now know what you are referring to. And I think that memorandum of briefing that might have gone up to Government at that time was pretty disgraceful in its content, in denying Native Title being, you know, an issue here in Victoria or applicable.

5 In terms of the details around the forestry decisions that were made at that time, I mean, to be honest, in 1994, I was spending most of my time organising rallies on the streets against that government, so - for a myriad of decisions that were being made that were just unjust.

MR McAVOY SC: Those briefings come from the Department, don't they?

10 **THE HON. NATALIE HUTCHINS:** Yes, they do, or entities - entities related to the Department.

MR McAVOY SC: And you accept that such briefings reflect an attitude and an approach to First Peoples - First Peoples' rights that is - sees First Peoples as the enemies?

15 **THE HON. NATALIE HUTCHINS:** Having read that particular piece of information that you're referring to, the briefing note, absolutely, yes. There's no doubt that in that era, that's how First Peoples were perceived by the government at the time.

20 **MR McAVOY SC:** And it would be hard to draw a distinction, I suggest to you, between that era, 1994, and the things that were occurring in the colonial era of the colony of Victoria.

25 **THE HON. NATALIE HUTCHINS:** I would say that pre-1994, there might have been, in the years before that, some progress for First Peoples' representation, but I also note that was the time in which many of our prominent Aboriginal leaders have - that have fought against this injustice were most active, some of our Elders that are around today. So I - do I think it reflects some of the policies of
30 colonisation? Yes, I do.

MR McAVOY SC: And that type of attitude, you would accept, is one really of an act of denial of any justice or really empowerment of First Peoples?

35 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: And how confident are you that there are not still, within the Victorian Government, there are people who would hold those views and attitudes?

40 **THE HON. NATALIE HUTCHINS:** How confident am I that -

MR McAVOY SC: Yes.

45 **THE HON. NATALIE HUTCHINS:** I - I don't know that it is my role to oversee attitudes of every one of our hundreds of thousands of employees -

MR McAVOY SC: I didn't ask you that, Minister.

THE HON. NATALIE HUTCHINS: - across the State. Do I think it is the attitude of our leadership teams? No, I don't.

5

MR McAVOY SC: Do you accept that not only does it take a committed leadership to achieve these significant changes but it also takes a committed bureaucracy?

10 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: And you can't tell this Commission that people of the same ilk as the authors of that briefing to the Minister in relation to the Plantations Corporation Act still don't exist within the Victorian Government.

15

THE HON. NATALIE HUTCHINS: Well, they don't exist in positions of significant power, no, I'm confident to say that.

20 **MR McAVOY SC:** If it's not - I'll just explore that for a little bit, for a moment. Do you accept that treating Aboriginal people in such a way has, at its heart, a racist approach to Aboriginal people, First Peoples and First Peoples' rights?

THE HON. NATALIE HUTCHINS: Yes.

25 **MR McAVOY SC:** And do you accept that repeated and excessive delay on behalf of Government is not also a symptom of a disrespect for First Peoples?

THE HON. NATALIE HUTCHINS: I can see how delay can be interpreted as being disrespectful, yes.

30

MR McAVOY SC: One of the things that has been discussed in these hearings this week, indeed, is the extent to which there is government inertia at play in terms of resistance to big reform. You would accept that all government agencies have a tendency to want to - things to stay the same, to maintain the status quo?

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THE HON. NATALIE HUTCHINS: Yes, and I would say that in regards to most change, not just change in this space.

40 **MR McAVOY SC:** But it's - you can't say, though, that the delays that are being experienced by First Peoples in Victoria in terms of countless numbers of frameworks and projects and processes and reviews are not affected by people who have a more - greater intent to derail the process than just being an example of inertia? You can't say that they don't impact on the performance of a government, can you?

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THE HON. NATALIE HUTCHINS: I am really confident that a lot of our public servants are very committed to seeing the injustices and demands and needs

met of our First Peoples. I am confident of that. Is that to say that there aren't people with different views that work within government at different levels? Possibly.

5 **MR McAVOY SC:** Would you accept that it's probable that people who disagree with the notions of First Peoples' self-determination that continue to exist within the Government within positions of power?

10 **THE HON. NATALIE HUTCHINS:** I'd like - I feel confident that people we - we nominate for positions of power are signed up to the agenda that this Government is signed up to. If there is a particular leader that you are alluding to within government that is a problem, I'm happy to consider - consider that.

15 **MR McAVOY SC:** What I'm trying to get to, Minister, and I apologise if we've gone the long way around, when there are so many - so many reports and reviews that are outstanding, there's got to be some reason for it. There's got to be some reason. And this Commission is tasked with the job of finding out why these things don't happen, why there are these delays in the performance of things government has committed to. Why there's delays in response to reports that
20 people have put extraordinary amounts of energy into.

THE HON. NATALIE HUTCHINS: But also I have made the point already that - that I acknowledge that some things have taken time to respond to, and that has in some cases you know been perceived as disrespectful by First Nations people,
25 but can I just say that I think in our time in government, over nine years, there has been tremendous change. There has been tremendous change that has been implemented in partnership with our First Nations people. This truth-telling Commission is one of those, and our legislation for treaty is another example of that.

30 **MR McAVOY SC:** Do you say that the Government can rest on its laurels in this regard? Is that the point you are trying to make?

35 **THE HON. NATALIE HUTCHINS:** No we can never rest on our laurels. And I have also been very much from day 1, eight years ago, when we talked about a Treaty process always committed to the fact that the Government continues to need to move forward with change and meeting the needs of our First Nations people without deferring everything to Treaty. I could see that that would be something that government could possibly pivot to, and that was a commitment
40 that myself and other Ministers through the Cabinet process made.

COMMISSIONER HUNTER: Can I just ask, Mr McAvoy, you said eight years of commitment, and the Government's got a strategy or a policy or whatever you want to call it, of self-determination, can you give me an example within those
45 eight years of true self-determination of First Peoples?

THE HON. NATALIE HUTCHINS: Certainly working with Aboriginal housing - Aboriginal Victorian housing organisation, and talking to them about their needs and what's led to the handing over of 1400 properties, if not more - that was during my time it was 1400 properties, for Housing Vic - Aboriginal Housing Victoria to be able to manage. I might not have the acronym right for them. But, yeah, I mean, that is just one example. That's one example.

COMMISSIONER HUNTER: Is that true self-determination for them, do they still need government funding to - and, you know, to run and -

THE HON. NATALIE HUTCHINS: Yes, there is - there is funding around their kind of core business, but I would say that handing over of properties for the management and titles of those properties meant that there could be true decision making made by that organisation as to, you know, whether those properties needed to be renovated, sold off, how they were managed and how they were, I guess, appointed through community to those that needed the housing.

COMMISSIONER HUNTER: If we asked them, they'd say that is true self-determination for housing?

THE HON. NATALIE HUTCHINS: You would have to ask them. I think that they've done some amazing work since they've had that opportunity to have the titles and ownership of those properties and I have also seen many other Aboriginal-run organisations who were given the mortgage or title to their properties make significant change and make their own decisions around where they're located and how they are delivering services. They're just - I recognise they are small steps, but they're examples.

MR McAVOY SC: Thank you, Commissioner. If it is a convenient time we might take another short break, and we will then go through to 1 o'clock. If we could have a five-minute break now. Thank you.

<THE HEARING ADJOURNED AT 12.08 PM

<THE HEARING RESUMED AT 12.18 PM

COMMISSIONER HUNTER: Thanks, counsel.

MR McAVOY SC: Thank you, Commissioners. Minister, I want to take you now to a different topic, namely the issue of the Soldier Settlement Scheme which I understand that you are familiar. That's correct?

THE HON. NATALIE HUTCHINS: (Nods head).

MR McAVOY SC: And in particular, I want to ask you about your understanding about the way in which the Scheme was operated and the complaints of First Peoples in relation to that Scheme.

THE HON. NATALIE HUTCHINS: Well, firstly, I had just like to say that whilst the Scheme was put in place to recognise and reward the efforts of Australians that fought in the First and Second World wars and upon their return, the way that the Government - or governments, I should say, because it was a joint Federal and State scheme - treated First Peoples and our soldiers - First People soldiers that returned was disgraceful, and I acknowledge that many - many, many people were discriminated against and lost opportunity to become holders of that land through that Scheme, and I am deeply, deeply saddened to read and hear about the returned soldiers, how they were treated, and the ongoing effects that that's had on their families.

MR McAVOY SC: Do - are you familiar with the legislative arrangements in relation to that Soldier Settlement Scheme or the schemes?

THE HON. NATALIE HUTCHINS: I - no, I don't know the legislation, but I do know the delivery of the schemes was split between the Commonwealth and the States.

MR McAVOY SC: Perhaps if you might refresh your memory. If you could look at paragraphs 40 to 42 of your statement. Commissioners might want to follow.

THE HON. NATALIE HUTCHINS: Oh yeah, it was called the Discharged Soldier Settlement Act of 1917, but I can't say that I am familiar with the details of that Act.

MR McAVOY SC: Are you familiar with the extent to which people in Victoria were provided with lands on return from service overseas?

THE HON. NATALIE HUTCHINS: Yeah. I mean, not only were returned soldiers - First Peoples returned soldiers discriminated against by not being included in the program, and I think there might have only been two that were, but I think that it was compounded by taking Aboriginal reserve land and reallocating that to non-Aboriginal people was yet another part of - of the terrible injustice that happened with that scheme.

MR McAVOY SC: And at paragraph 40 of your statement in the last sentence - I will just read it:

"A State commemorative project found that by 1930 the Victorian Government had acquired 2.5 million acres, which is noted as being just over 1 million hectares, through the Discharged Soldier Settlement Act 1917."

And of that 2 million acres - 2.5 million acres, the understanding is - your understanding is that only two Aboriginal servicemen gained access to that scheme and to any lands under that process?

THE HON. NATALIE HUTCHINS: That's correct, and I name them as Private Percy Pepper and Private George Winter McDonald in the statement.

5 **COMMISSIONER NORTH:** Am I right in thinking that the total number who served - Aboriginal men that served were about 90?

THE HON. NATALIE HUTCHINS: I think across both wars -

10 **COMMISSIONER NORTH:** We're talking about the First World War.

THE HON. NATALIE HUTCHINS: I don't have that number, but I'm happy to get that. I thought in total we were talking around 1,000 people across both wars, but I am happy to -

15 **COMMISSIONER NORTH:** And how many still - are still alive?

THE HON. NATALIE HUTCHINS: I don't actually have that information.

20 **COMMISSIONER NORTH:** It just struck me that it's an obvious injustice. A lot of it is a long time ago. And, like, why wouldn't you fix it? I know what you've said in your - in paragraph 46 or 47 about the problems being a Commonwealth, State responsibility. In the end, there is sort of no question about the unfairness of that.

25 **THE HON. NATALIE HUTCHINS:** No, there is no question of that. And until - until working on this statement and being briefed on all of the issues that Yoorrook Justice Commission was considering with these rounds of hearings, I was not aware of this. I was not even made aware of this in the first term that I was Minister back in 2014 to 2018. But it is certainly something that I think we
30 could work with the Federal Government on in coming up with a solution, and I've had initial discussions with the Federal ministers who, again, were completely unaware of this - this scheme.

35 **COMMISSIONER NORTH:** The problem with the Commonwealth is that it has a larger canvas multiplying the number of people, but with Victoria, if Victoria decided it is something we have to do something about - it just doesn't strike me as something that should be difficult to address, should it? I mean, it's - being such an obvious immediate land injustice issue, and as a - you know, just as a demonstration of commitment and goodwill, I would have thought how many
40 people there are - you know, probably under 500 now.

THE HON. NATALIE HUTCHINS: Yes, and there is redress schemes that currently exist that could be modelled quite easily with it. But to be honest, Commissioner North, I have not had the opportunity to have conversations with
45 any First Peoples' entities to talk about what would be sought in a redress scheme. But happy to take that on board and - and have a look at it.

COMMISSIONER NORTH: I imagine the answer might be money.

5 **THE HON. NATALIE HUTCHINS:** Yeah, well, other redress schemes have money as a part of that, but also counselling is another part of that. There is a myriad of things that come with it. Yep.

10 **COMMISSIONER LOVETT:** Just with that, Minister, so Uncle Johnny Lovett gave evidence at Yoorrook, and talked about this particular thing along with a myriad of other things that he wanted to express with us at truth-telling, so just picking up on that last point, there's other people I am sure, you'd be open to having a meeting with him to talk about soldier settlements?

THE HON. NATALIE HUTCHINS: Yes, I would be.

15 **COMMISSIONER LOVETT:** And further to the evidence that we received as well, where there was a reference to two land transfers around soldier settlement. Now, we heard some evidence from one family descended in particular of one
20 parcel of land out of the two that was enabled through that process was - someone who had one leg, and the country that was returned to that individual was so rocky that they had a hard time to be able to do anything with it, to be able to walk
across it, because of only having one leg, not being able to use that to do any farming for that particular point of time or any really self-determining practices to be able to set them up for the future.

25 I know that is not your issue, but just putting it out there that was one of the land transfers that was unusable for that individual who - and suffered deep trauma in their life, to be able to come back and think that they are getting something for their contributions to the country, as in Australia, as a whole, and to not be able to access and use that land, meaningfully and effectively is really, you know, gutting
30 to hear that.

THE HON. NATALIE HUTCHINS: Yeah. And the injustices - not just about the land schemes well, but - I don't need to tell you, but when Aboriginal veterans went off and fought for this country then came back to be discriminated against
35 time and time again, whether it was the RSL, whether it was acknowledgment in their communities for what they had done for our country, let alone the land scheme, it's - it's a massive disgrace.

40 **COMMISSIONER LOVETT:** I agree. And I still hold the stories from my grandfather who was - went to World War II and fought for this country and came back and lived through those discriminative times and watched his people suffering as well. So, you know, those stories sit with me through this process.

45 **THE HON. NATALIE HUTCHINS:** Some big wounds.

MR McAVOY SC: Now, I'd just like you to look at the letter on your letterhead that has been handed to you and I ask that it be put on the screen. It is a letter from

you, dated 7 March 2024, to the Honourable Matt Keogh MP, Minister for Defence Personnel, Minister for Veterans Affairs in the Federal Government. You have got a copy of that letter?

5 **THE HON. NATALIE HUTCHINS:** I do.

MR McAVOY SC: Copy of that on the screen. Can we just zoom in a little bit more, please. You've alerted - in this letter, if I can just paraphrase it, you've alerted the Federal Minister to the fact that the issue of the Soldier Settlement
10 Scheme is being considered by the Yoorrook Justice Commission. And you are - in the fourth paragraph, you say:

15 "I'm following up on a commitment made to the Commission by my predecessor to raise First Peoples' inequitable treatment in relation to the Schemes at the Commonwealth level."

You note that the Schemes were a joint State/Commonwealth initiative, and then identify that:

20 "Potential recommendations made by the Commission in its next report due March 2025 may require a joint Commonwealth and State response."

And the next paragraph says:

25 "I would welcome the opportunity to discuss this further once the Commission's recommendations are published in March 2025."

COMMISSIONER HUNTER: Mr McAvoy, what date is that?

30 **MR McAVOY SC:** This is 3 March 2024 - sorry, 7 March 2024, some 11 days prior to the Minister's statement.

COMMISSIONER NORTH: Minister, I'm puzzled as to why you need to wait until March next year to discuss the issue. I mean, you say in the letter there is
35 obvious inequity. We might say that in a year's time or six months' time, whenever it is, but, you know, it just opens the aspect for people - First Nations people to say, "Well, there are these commitments", and as I've said, they are genuinely expressed, but when it comes to doing something productive, I mean, why wait?
40 We all know it was very wrong, like, exceedingly wrong. Anzac Day is coming up. And you say, "Well, let's wait until March next year to talk about it."

THE HON. NATALIE HUTCHINS: That is to talk about it with the Federal Government. That's not to take action at the State -

45 **COMMISSIONER NORTH:** Yes, but the way I understand your thinking, and I might be wrong here, but you talk about it as if it is something that you need to go forward in tandem. I don't see that that is necessary myself, but it seems to be the

way you're thinking. If that's so, then I don't see why there should be a delay. And as I say, the problem about it is that it feeds into a view that the commitments made are - well, so I think they're genuine, but I don't know that that would be obvious to others if they see examples, like, really clear simple examples like this
5 one. Can you shed any light on my reactions?

THE HON. NATALIE HUTCHINS: Yeah, I understand your reactions. And I want to clarify that that doesn't mean that the State Government is not going to respond on this matter beforehand. And I honestly think that - in my discussions, I
10 not only wrote to the Deputy Prime Minister and the Minister for Indigenous Affairs; I met with them to discuss it as well. I got the impression that a recommendation from this Commission would be of great assistance in getting the Federal Government focused on moving on this. Now, that was just my interpretation in a very short conversation. I guess that's why the time frames were
15 included, based on the recommendations from the Commission, but that is not to say that the State is not going to progress anything on this topic.

COMMISSIONER NORTH: And if the Commonwealth is using the timeline of this Commission, then perhaps the transcript of today could be shown to them to
20 say that that would be quite illegitimate and bad for the vision that it gives to indigenous people about how seriously their obvious injustices are taken up.

THE HON. NATALIE HUTCHINS: And I know that there is consideration being given by the Commonwealth and other states about a way forward with
25 truth-telling across the nation, and it may not be a bad thing to be sharing some of the transcript from today.

MR McAVOY SC: So the communication with the Federal Government, just so we're clear, is on the basis that the primary legislation was Commonwealth
30 legislation, and the scheme provided for the Commonwealth to reimburse the State for the cost of compliance with the Soldier Settlement Scheme. Is that correct?

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And so are we to understand that the State of Victoria is saying, well, we would like the Commonwealth to contribute to any compensation
35 scheme that's established.

THE HON. NATALIE HUTCHINS: Yeah. And also - and I don't know because I haven't had the conversation, but maybe the need for apology needs to come
40 from different levels of government as well. That - that could be a factor in redress of this matter.

MR McAVOY SC: It is the case that it is unlikely that there will be areas of land
45 that can now be transferred to the families of the returned servicemen, isn't it?

THE HON. NATALIE HUTCHINS: It is unlikely.

MR McAVOY SC: Are we really talking about hard redress in terms of any monetary compensation, soft redress in forms of apologies and counselling and other matters?

5

THE HON. NATALIE HUTCHINS: Yes, that is not - I say yes because that is my experience with other redress schemes and I don't want to pre-empt what might be in this one.

10 **MR McAVOY SC:** I will just take you back to Commissioner North's observation, that it's not a complex scheme to establish, that the injustice is clear, and that the - Victoria could do it on its own, or could establish the scheme and say to the Commonwealth, "We expect you to contribute" before it commences with - it commences.

15

THE HON. NATALIE HUTCHINS: I'm not so caught up on the - whether the Federal Government participates or not, but rather how - what we would include in the scheme and how we would apply it. And we have done schemes with and without the Commonwealth support, as to what we see needs to be redressed, and
20 I certainly feel that land allocations in this circumstance would go a long way, but I don't know they're a reality and I am also not sure that is what, in some cases, the families would want. So that would be needing to be fleshed out more from the State's perspective.

25 **MR McAVOY SC:** You understand - just as a matter of history, I suppose, Minister, you understand that Uncle Johnny Lovett was one of the very first witnesses in this whole Yoorrook process, and what - from memory was June or July 2021. So the Government's been on notice with this particular complaint the whole of that time, and we see your correspondence to the Federal Minister
30 suggesting that you'll be in touch after this coming report, it's - I suggest to you it's not consistent with any urgency to resolve this matter.

THE HON. NATALIE HUTCHINS: I disagree. I think the Government has a potential to address this matter sooner and not just the date that is included in this
35 letter. This letter has a commitment in it that was more around the appetite of the Federal Government, not the State Government.

MR McAVOY SC: Well, the letter doesn't say that the State Government is going to go ahead regardless?

40

THE HON. NATALIE HUTCHINS: No, it doesn't, because we haven't made that decision.

45 **MR McAVOY SC:** Minister, Commissioners, I might, at this point, hand over to my learned friend junior to take up a line of questioning with the witness up to the lunch break. And I anticipate that there will be a number of questions for the Minister after lunch.

COMMISSIONER HUNTER: Yes.

5 **MR McAVOY SC:** At this point, we might go until 10 past 1, given that we started at 10 past 10. But in any event, when this evidence is concluded with Mr Goodwin, it would be an appropriate time to take the lunch break.

COMMISSIONER HUNTER: Thanks, counsel.

10 **MR McAVOY SC:** Thank you, Minister.

MR GOODWIN: Thank you, Commissioners. Minister, I am going to ask some questions about the recent First Principles Review. Your statement commences:

15 "Discussion about the First Principles Review."

At paragraph 272 on page 55. Now, I am correct in saying that the Review concerned the operation of the Traditional Owner Settlement Act; that's right?

20 **THE HON. NATALIE HUTCHINS:** Yep.

MR GOODWIN: And Mr McAvoy will be asking some questions - he will likely be asking some questions generally about the operation of Native Title and the Traditional Owner Settlement Act that - just by way of background, the
25 Traditional Owner Settlement Act was passed in 2010 as an alternative pathway to the settlement of Native Title claims in Victoria.

THE HON. NATALIE HUTCHINS: Yep.

30 **MR GOODWIN:** And as I understand it, there were two focuses of the review: first to respond to the High Court's decision in Northern Territory v Griffiths, typically referred to as the Timber Creek decision, and explore what guidance might be drawn from the decision to the calculation of compensation under the Traditional Owner Settlement Act. And then second, to examine whether the
35 rights recognised under a settlement agreement under that Act, particularly in template agreements, are appropriate or could be strengthened. So is that your understanding of the purpose of the review?

THE HON. NATALIE HUTCHINS: Yes.

40 **MR GOODWIN:** And when I am referring to compensation in the course of my questions, I am doing so in the Native Title and Traditional Owner Settlement Act context. So the Government's arrangements for the review was there was a First Principles Review Committee made up of Victorian Traditional Owners and an
45 Executive Policy Owners Forum made up of senior executive from government departments and agencies. That's right?

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: And is it your understanding that members of the Committee were comprised of Victorian Traditional Owners, including those that worked for
5 Traditional Owner Corporations?

THE HON. NATALIE HUTCHINS: Yes, that's my understanding.

MR GOODWIN: So those people were likely drawn from people who are
10 intimately aware of and involved in the operation of the Traditional Owner Settlement Act?

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: And then as recorded in the review itself, between 2019 and
15 2021, the Forum of senior executives was made up of 29 representatives from all the affected departments and agencies?

THE HON. NATALIE HUTCHINS: Yep.
20

MR GOODWIN: And so the report is structured in such a way that there are recommendations made that are joint between the Committee and the Forum, and recommendations that are individual to either the Committee and the Forum.

THE HON. NATALIE HUTCHINS: Yep.
25

MR GOODWIN: And it was intended at the time that the final report of the review would be provided to the Attorney-General and, to the extent necessary, the Attorney-General would take matters to Cabinet for consideration.
30

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: Now, if I can bring up paragraph - we have it at paragraph 272, if we can just highlight that paragraph. You mention in the final sentence that:
35

"Once again, it was Victorian Traditional Owners who led the way by identifying the key areas in which the Traditional Owner Settlement Act was considered to have not delivered on its aims."

MR GOODWIN: Are you acknowledging there that Traditional Owners themselves advocated for and pursued the review?
40

THE HON. NATALIE HUTCHINS: Yes, yes, and the need for change.

MR GOODWIN: And then the terms of reference neatly set out what appear to be the concerns of Victorian Traditional Owners that led to that review. So if I can go to pages 89 and 90 of the review. To assist, it is DPC.0011.003.0098. We have
45

it. Minister, apologies for that delay. So this sets out the scope of the review. And so is it your understanding that this highlights some of the concerns or at least areas of discussion that Victorian Traditional Owners wanted to engage in with the government?

5

THE HON. NATALIE HUTCHINS: Yes. I just want to, for the record, to know that I was not actually Minister at this time and involved in this process.

MR GOODWIN: So the Attorney-General had portfolio responsibility?

10

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: Fine. And so it was Jill Hennessy, the Attorney-General, who endorsed - well, who was responsible at the time for the terms of reference, and established the review.

15

THE HON. NATALIE HUTCHINS: But I also at that time was not in Cabinet. Yep.

MR GOODWIN: So in - on reflection then, as currently with portfolio responsibilities, you understand that, at least at that time, these were the concerns of Victorian Traditional Owners?

20

THE HON. NATALIE HUTCHINS: Yes.

25

MR GOODWIN: So I will just highlight a number of them, under the content of Natural Resource Agreements which is an agreement that is a potential part of the settlement package under the Act, the fifth dot point highlights the commercial use of natural resources, and then under the Land Use Activity Agreement, there is reference to the community benefits formula in light of the Timber Creek decision. And so the - in lay terms, the Community Benefits Formula is a formula used to compensate Traditional Owners for land use activities on their country as an alternative to the Future Acts regime under the Native Title Act?

30

And then if we go to the second part, there's also - I should say, sorry, again under Community Benefits Formula, there is a reference to categorisation of land use activities, then under the recognition and settlement agreement there is reference to the funding agreement and the implications of Timber Creek with respect to negotiation of settlement packages. So, Minister, just like Mr Paton from the Federation yesterday, you will be glad to know I don't intend to take you through the entirety of the report. I just want to focus on certain recommendations. So if we can go to page 27 of the report.

35

40

THE HON. NATALIE HUTCHINS: I actually don't have my hard copy with me, but I'm happy to look at the screen.

45

MR GOODWIN: And I'm also happy if that hard copy is provided to you.

THE HON. NATALIE HUTCHINS: Can I ask you to repeat that.

MR GOODWIN: Yes. And apologies, I didn't realise that, Minister. So this is
5 page 27. Recommendation 1 - and this is a joint recommendation:

"Settlement Act agreements should represent a fair and just settlement for
Traditional Owners as assessed against the listed criteria below."

10 And as the joint comments note, that's a change from the current policy of
providing an attractive and fair alternative to settling claims under the Native Title
Act.

THE HON. NATALIE HUTCHINS: Yes.

15

MR GOODWIN: And the particular criteria listed there is that whether a
settlement is just and fair will be judged against certain criteria, and that criteria
includes whether the author complies with and, in practice, implements the United
Nations Declaration on the Rights of Indigenous Peoples, and also whether -
20 another criteria will be whether the offer meets or exceeds what would otherwise
be available if the Traditional Owner group obtained a positive determination of
Native Title. Now, just to skip ahead to the end of the story, this recommendation
was accepted by the Government with immediate effect, and you communicated
that to the Federation last December.

25

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: From the Government's perspective, why was this
recommended accepted and why was it important?

30

THE HON. NATALIE HUTCHINS: I think since the findings of Timber Creek,
that - it's obviously set a new benchmark, but also really, I guess, focused
government on the real need for detailed outcomes to be fair and just, and I think
that - yes, probably -

35

MR GOODWIN: And then if we go to principle 2 and recommendation 2 on the
next page. So recommendation 2 states - and this is an individual recommendation
of the committee. The recommendation states that:

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

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

THE HON. NATALIE HUTCHINS: Yes, so that is the Federal law.

MR GOODWIN: And the forum, in putting its comments, if we can just go over - I know we have it. Under the Forum comments, essentially the Forum commented that the issue was "beyond the scope of the review, that the issue should be referred to the minister for Aboriginal Affairs", as the title was then, "for potential progression through the Treaty process." Now, I don't want to quibble with that conclusion, but do you as Minister understand the desire of Victorian Traditional Owners who participated in the review for any just and fair settlement of claims to consider pre-1975 acts?

5

THE HON. NATALIE HUTCHINS: Do I understand why they would do that? Yes, I do, yes.

10

MR GOODWIN: And what's your understanding of the basis of that desire?

15

THE HON. NATALIE HUTCHINS: The injustices and dispossessions that occurred before that time would be the driver of that.

MR GOODWIN: And it would be right to say that this is particularly so when the fact that most acts that either wholly or partly extinguished Native Title in Victoria were likely to have occurred prior to 1975?

20

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: Is it your view that Treaty negotiations will not be similarly constrained and take a more holistic approach to the impact of the history of the State on Victorian Traditional Owners and their relationship to country?

25

THE HON. NATALIE HUTCHINS: I think Treaty will give us a mechanism that may be well outside the scope of the Traditional Owner Act. I won't pre-empt, but I think it will give us any mechanisms without the restrictions of these time frames.

30

MR GOODWIN: And I suppose without the restrictions of the legal frameworks that constrain particular issues around the enactment of the Racial Discrimination Act and its effect on Native Title law.

35

THE HON. NATALIE HUTCHINS: That's correct.

MR GOODWIN: So if I then can go to recommendation 18 which is on page 45 of the report. So just while that is coming up on the screen - do you have it, Minister?

40

THE HON. NATALIE HUTCHINS: Yes, commercial use?

45

MR GOODWIN: Yes, under the heading Commercial Use of Animals and Water, and we have it now. Currently a natural resource agreement, which may

also form part of a settlement package upped the Act, may allow for the commercial use of vegetation and stone, but not for the commercial use of animals and water. Do you understand that to be the position?

5 **THE HON. NATALIE HUTCHINS:** The - yes.

MR GOODWIN: And still in regards to the commercial use of vegetation and stone, it isn't a given under a natural resource agreement, but is essentially an area for potential negotiation with the State?

10

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: Now, both the Committee and the Forum agreed that the Traditional Owner Settlement Act should be amended to provide for commercial use of animals other than fish, but in essence, the forum did not agree that water and fish should be included. Now, you explain in your statement - and I'll just get the particular paragraph for your benefit. This is paragraph 280.

15

THE HON. NATALIE HUTCHINS: Yes.

20

MR GOODWIN: You mention - you say in relation to certain recommendations not agreed, "Nor" - this is just over the page on the top of page 57:

25

"Nor did the Government agree to a right to commercial use of fish and water, as these resources are fully allocated for commercial use or nearly so."

What - can you explain in more detail that reasoning, as you understand it?

30

THE HON. NATALIE HUTCHINS: No, I can't, because I think this is a little bit outside my portfolio as to the allocation of commercial use for fish and water. But is this something that could be put back on the table during future negotiations for Treaty? Yes.

35

MR GOODWIN: And you mentioned in the next line:

"However, Government is taking steps to enable Traditional Owners participation in the commercial water and fish regimes".

40

Do you know what those steps are?

THE HON. NATALIE HUTCHINS: No, but I'd be happy to get some more detail and come back to you.

45

MR GOODWIN: Now, Minister, a cynic might say that those two natural resources, water and fish, are particularly commercially valuable, and that other vested interests, both third party and the Government itself, are not keen on sharing a piece of the pie with Traditional Owners. What's your response to that?

THE HON. NATALIE HUTCHINS: Change takes time. That's what I would say to that.

5 **MR GOODWIN:** And do I take it from that that change - that type of change requires sensitivity around particular vested interests?

10 **THE HON. NATALIE HUTCHINS:** No, I don't want to comment on vested interests of commercial users. But I think the Government's view has been in the past that these were things that could only be negotiated via a Traditional Owner Settlement Act. And whilst this review has highlighted some of the shortfalls perceived or shortfalls that have been found by Traditional Owner groups, that's not to say that these are not issues that could be pursued through Treaty or Treaty process, particularly on a geographical basis.

15 **MR GOODWIN:** And you understand that the desire of the Committee in making this recommendation was simply to open up these matters for negotiation with the State, in the context that they would not necessarily be a given in the natural resources agreement. In those circumstances, couldn't some of the issues that
20 you're - you've highlighted, including the pace of change, still be relevant but nonetheless be open for negotiation for Traditional Owner groups considering entering into a natural resources agreement?

25 **THE HON. NATALIE HUTCHINS:** Into the future, yes.

MR GOODWIN: We've heard evidence from multiple Traditional Owners that economic empowerment is essential for self-determination, and there are significant funding challenges that restrain their capacity to deliver benefits for their community. You're generally aware of such issues?

30 **THE HON. NATALIE HUTCHINS:** Yes, I am.

MR GOODWIN: Can you understand why Traditional Owners might be frustrated when - in circumstances where they want to negotiate with government
35 on the commercial use of natural resources, to build an economic base that means they are self-sufficient, they are in fact stymied or delayed in their capacity to do so?

40 **THE HON. NATALIE HUTCHINS:** Yes and I understand that frustration, and acknowledge with 200 years of colonisation there are commercial arrangements in place that - if the Government was to say we are going to negotiate right now on these when we've got commercial arrangements in place that could be in breach of what we are doing, that's not to say that into the future when areas become
45 available, that that couldn't be part of a Treaty negotiation.

MR GOODWIN: And you mention in your statement at paragraph 281 that you intend to keep an open line of communication with Traditional Owners on these

issues, and suggest that Government should respond in good faith to Traditional Owner proposals put forward in Treaty negotiations. Does that include thinking innovatively about commercial use of resources on Country?

5 **THE HON. NATALIE HUTCHINS:** Yeah, of course, it does.

MR GOODWIN: The Commission has heard evidence of significant trade routes that operated across Victoria prior to colonisation, including various trade routes between First Nations themselves. So that really suggests that commercial activity in Victoria predates British colonisation; that's right?

THE HON. NATALIE HUTCHINS: Yes.

15 **MR GOODWIN:** So it's fundamental to access to cultural rights and traditional rights for Traditional Owners?

THE HON. NATALIE HUTCHINS: Yes, I recognise that.

20 **MR GOODWIN:** I want to ask some questions about the length of time it took to finalise the review. So it was originally intended for the report to be presented to the Attorney-General by 1 August 2020.

THE HON. NATALIE HUTCHINS: Yes.

25 **MR GOODWIN:** Now of course no one foresaw the outbreak of a global pandemic at the time the terms of reference were endorsed. But nonetheless, at paragraph 273 of your statement, you note that the review was not finalised until November 2023. Is that when you received a final copy of the review?

30 **THE HON. NATALIE HUTCHINS:** Yeah. It was around that time. I couldn't actually lock in that November date, but I - yeah.

MR GOODWIN: But the end of last year sounds about right?

35 **THE HON. NATALIE HUTCHINS:** Yeah, yes.

MR GOODWIN: Although I understand the Attorney-General, when she and her predecessor had portfolio responsibilities, and when you took over portfolio responsibilities for land justice, received briefings on progress of the review over its course.

THE HON. NATALIE HUTCHINS: Yes.

45 **MR GOODWIN:** So you note at paragraph 274 in the final sentence that the -

THE HON. NATALIE HUTCHINS: Can I just clarify, going back, when I say yes, it's only from September last year because it was a different Minister that had the portfolio, but yes, she would have received it.

5 **MR GOODWIN:** And apologies for my question. It was not clear. I was putting that whoever had the portfolio responsibility was receiving briefings.

THE HON. NATALIE HUTCHINS: Yes.

10 **MR GOODWIN:** So now, you note at paragraph 274 that the final report was authorised by Traditional Owner partners in March of 2022. Do I take it by that that's the people who participated on the Committee?

THE HON. NATALIE HUTCHINS: Yes.

15 **MR GOODWIN:** Now, that's about a 20-month gap between authorisation by Traditional Owners and finalisation by Government. What's the explanation for that gap in time?

20 **THE HON. NATALIE HUTCHINS:** I think there's a number of factors. Certainly COVID did play a part in it. Certainly changing ministers in portfolio areas did play a part in it. But I think, you know, most importantly is to say that it's not in line with my expectations that it should have taken so long, and I apologise - apologise to the Traditional Owners who were involved in this process who gave
25 up their time to be part of this review that it took so long.

MR GOODWIN: Because those issues that you have highlighted don't really explain conduct post March 2022, do they?

30 **THE HON. NATALIE HUTCHINS:** In my statement, no.

MR GOODWIN: And do you accept that timeliness itself is an element of fairness and justice?

35 **THE HON. NATALIE HUTCHINS:** I think that point has been made to me today multiple times, yes.

MR GOODWIN: Do you accept that when all relevant agencies were actually part of the review itself through the forum, that there really shouldn't have been
40 such a delay in response from those agencies?

THE HON. NATALIE HUTCHINS: Yeah, it should have been responded to sooner.

45 **MR GOODWIN:** I know this is a variation on a theme, as you've already highlighted, but in your view how does the Government ensure that its own delay does not become or is no longer endemic to First Nations affairs?

THE HON. NATALIE HUTCHINS: By trying to capture some of these outcomes in a Treaty process that has an independent authority keeping us on track for implementation. I think that's the pathway forward.

5

COMMISSIONER NORTH: Can I ask you, Minister, again, I am really sort of curious to understand what the sources of delay are. And you have explained earlier today some of them, but this particular one is there some reason that sort of explains a systemic issue or is it just that it got left behind in departmental consideration?

10

THE HON. NATALIE HUTCHINS: No, I think that the issues that I outlined are firstly - and probably one thing I didn't talk about - I mean, yes, COVID delayed a lot of things for us, a change in minister, another thing, but also responsibility, shifting from the Attorney-General's portfolio to Treaty and First Peoples was another reason for the delay in this. And I note between myself and the first Minister for Treaty and First Peoples, there was an acting Minister whilst she was on maternity leave. So there were a myriad of issues as to why, and they come down to the highest level of government structure at the moment, yeah.

15

20

MR GOODWIN: Now, as I mentioned, the forum listed 39 senior executives of government departments and agencies as members between 2019 and 2021. And now, while it might be said to be laudable that there was such cross-departmental representation in an important review such as this, at the same time, the flip side of the coin is that I wonder if you're concerned as minister that sometimes in government processes there are, to put it bluntly, too many cooks in the kitchen.

25

THE HON. NATALIE HUTCHINS: Yeah, from time to time, there are too many cooks in the kitchen. I don't dispute that. And that's because departments have their own interests and their minister's interests at heart, and they want to make sure they're protecting their patch, their resources and their delivery points. And there's nothing wrong with that, except that when we want to make change we need them to be able to be flexible to do that. And we need new mechanisms around which we do that. That is what I am hoping or I know a Treaty option will bring to us.

30

35

MR GOODWIN: And are you aware of any community sector group or industry group that regularly has to deal with the full gamut of the bureaucracy to pursue their rights or interests as First Nations people in Victoria have to?

40

THE HON. NATALIE HUTCHINS: Yes, and that would be women. And it's just as tough to get change.

MR GOODWIN: And in that respect, two of the most marginalised groups in the State have to navigate the full plethora of bureaucracy in order to advocate for reform; you accept that?

45

THE HON. NATALIE HUTCHINS: Mmm-hmm.

MR GOODWIN: And there is a tension there, really, in terms of when we are talking about the capacity and resourcing available for those people to be able to engage with the bureaucracy?
5

THE HON. NATALIE HUTCHINS: Yes, and when we have First Peoples employed in our bureaucracy, we find that things move faster in that space. And when we have more women in leadership roles in bureaucracy, we find change moves faster.
10

MR GOODWIN: I just want to take you to the letter that you wrote Paul Paton, or Paton, the CEO of the Federation of Victorian Traditional Owners Corporations, in December last year. And if we can just go over to the next page and highlight (b) and (c) at the top of the page. Can you see that?
15

THE HON. NATALIE HUTCHINS: Yes, I can. Yes, I can.

MR GOODWIN: And so in the letter, the Government states that it is agreed in principle to the other joint recommendations.
20

THE HON. NATALIE HUTCHINS: Yes.

MR GOODWIN: And you note an interdepartmental committee has been established to consider policy, financial and community implications of the proposed changes. Shouldn't that really have occurred in that gap between March 2022 and November 2023?
25

THE HON. NATALIE HUTCHINS: I'm not sure that actually that work could have started without a Cabinet direction around these recommendations.
30

MR GOODWIN: So again, that highlights the significant impact of that delay on the capacity to deliver on the recommendations of the review?

THE HON. NATALIE HUTCHINS: Yeah, it probably contributed to the time frames, yes.
35

MR GOODWIN: And would you understand why Traditional Owners, particularly those that participated in the review, might think that this is just setting up another process, again in blunt terms, kicking the can down the road rather than delivering tangible reform?
40

THE HON. NATALIE HUTCHINS: No, because we've committed to - we have made commitments within the recommendation to make progress and we have identified others that need to be raised in the Treaty negotiations.
45

MR GOODWIN: Just finally, I want to take you to some remarks of the Committee in the introduction to the review. So this is in page 18 of the review itself.

5 **COMMISSIONER NORTH:** Just before you move on, Mr Goodwin.

MR GOODWIN: Yes, of course.

10 **COMMISSIONER NORTH:** Minister, in relation to (b), the acceptance in principle is subject to some fairly major further considerations, particularly the last one. Has that been advanced at all since, do you know? The financial implications?

15 **THE HON. NATALIE HUTCHINS:** Has it been costed? Yes. Has costing works commenced? Yes. Has budget allocation been made? I can't say ahead of the release of the budget.

20 **COMMISSIONER NORTH:** And then what about the possible legislative processes?

THE HON. NATALIE HUTCHINS: Has consideration been given to the recommendations that require it? Yes, there has - there have. Has drafting commenced? I am not sure. I will have to come back.

25 **COMMISSIONER NORTH:** Is there - have you shared the progress with the TOs who are on the other side of the table?

THE HON. NATALIE HUTCHINS: Not - not as yet. Not in detail, no.

30 **MR GOODWIN:** And I should say the review has been shared with the First Peoples' Assembly of Victoria.

THE HON. NATALIE HUTCHINS: Yes, it has.

35 **MR GOODWIN:** So just finally to take you some remarks of the Committee in the - as an addendum to the executive summary, and if we can highlight the third paragraph. And I won't read all of it out, Minister, but just halfway through, the Committee states that:

40 "While it is understood - there were long delays while the Forum considered positions put forward by the Committee. Presumably this time was spent in internal debate. And while it is understood the whole-of-government decision making is complex, externally from the position of the Committee an excessive amount of time is being spent on issues long articulated by
45 Traditional Owners and for which it was assumed Forum members would be well versed and ready to provide alternatives. Indeed, it is notable that some departments sought to amend recommendations and add last-minute

conditions up to and until the final drafting of the report when there was no time for further discussion or debate."

5 Are you disappointed that the Traditional Owners involved in the process felt that way and felt so strongly that they wanted to write an addendum to the executive summary?

10 **THE HON. NATALIE HUTCHINS:** Yeah, I mean, I welcome their views outside of that process. But yeah, I understand their disappointment.

15 **MR GOODWIN:** And what would you like to see that - we've discussed it in part, but what would you like to see done in the future to ensure such a situation or even the perception of such a situation for Victorian Traditional Owners does not occur during the Treaty negotiation process?

20 **THE HON. NATALIE HUTCHINS:** I think because the process is quite starkly different in that when we come to the tables - and this has been a key part of the legislation of advancing Treaty - when we come to the table to negotiate, we come with the authority. And we have to prove that as part of the process, both on the Government's side and on First Peoples' side. That, in my mind, in practice, means that that last minute amendments and time wasting will not be a factor.

MR GOODWIN: They are my questions.

25 **COMMISSIONER HUNTER:** Can I just add something to that. We have spoken about time, of course, and how long it takes to get everything done. And then you've got no time for further discussion or debate about a recommendation. I just find it quite ironic that some things can take as long as they need, and then when it comes back to responding to something or for further discussion or debate, there's
30 no time because it is the final draft. So I just wanted to make that comment because I find this comment quite ironic considering what we have spoken about today.

35 **THE HON. NATALIE HUTCHINS:** Yes, and I am disappointed that that was the case as well.

40 **COMMISSIONER LOVETT:** You said time is a lot of - a barrier, picking up on Commissioner Hunter's comment there. But would you say that leadership is a barrier, showing leadership? I am not saying you specifically, but just more broadly around being courageous. Treaty is about, you know, a brand-new future, shared future, and it is going to take considerable leadership, demonstrated leadership to be able to make that happen, from both sides. Do you want to make any comments - so we hear a lot about time and constraints and so forth, but what about leadership that needs to be shown?

45 **THE HON. NATALIE HUTCHINS:** Yeah, I absolutely agree. And I think overcoming the fear of change and the fear of transfer of power is a big factor.

And the only way to do that is to lead and use examples of how actually empowerment is a good thing, not a bad thing. And, you know, I failed to mention before when we talked about self-determination that where we have handed power and resources to First Nations organisation, we have seen some of the most
 5 extraordinary outcomes in Closing the Gap targets. And I think about that primarily in the health space with health organisations who have, through a cultural lens, have been able to get the most extraordinary health results once they've got full self-determination over - over the work that they're doing, and I think there is still a lot of work around tackling and - tackling that - that shift of
 10 power and change out of all of our - our government entities.

COMMISSIONER LOVETT: And what drives you in that context?

THE HON. NATALIE HUTCHINS: Because I - I have seen people change in the time that I have been in this role. I have seen significant shifts in people that I have worked with for many years that I didn't think would ever change, and they have, to become more receptive and less combative and more trusting of handing over power and resources to First Peoples. And that has only come through an understanding of the history.
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 20

MR GOODWIN: Thank you, Commissioners. I think if it's an appropriate time to have lunch. We are in the Commissioners' hands. We can start back at 10 past 2, with a view of finishing at 10 past 3, although that might go over a little bit. We can check with the Minister about her availability. But if that's a convenient time to restart, we are comfortable with that.
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COMMISSIONER HUNTER: We're happy with that, that's great. Thanks, we will adjourn for lunch.

30 <THE HEARING ADJOURNED AT 1.20 PM

<THE HEARING RESUMED AT 2.15 PM

COMMISSIONER HUNTER: Thanks, counsel.
 35

MR McAVOY SC: Thank you, Commissioners. Minister, I'm going to ask you some questions now about the Mabo decision and Native Title in the State of Victoria. This Commission has heard evidence from senior Yorta Yorta man, Uncle Col Walker, as to as to the hurt and pain and trauma that was caused by the
 40 Native Title hearing process. His evidence was that:

"When I had to give evidence, they knew I was a local bloke and had knowledge from my Elders but they crucified. What hurt me the Judge said that I was a deliberate liar. I think we had a lot of pressure put on us. You'd
 45 feel terrible while you were giving evidence. Why did you have to give so much evidence? Why did you have to tell them this? Why'd you have to sit

there for hours being cross-examined when your Elders told you these things?"

5 At a hearing on 27 - at the hearing on 27 May 2022, Uncle Col told Yoorrook that the Yorta Yorta case that went for over 10 years caused pain at the time and has caused ongoing hurt for the community. Just this week, the Commissioners heard word from - evidence from Uncle Graham Atkinson in his statement to Yoorrook. Uncle Graham explained:

10 "The Yorta Yorta Native Title outcome led to a - led to the Traditional Owner Settlement Act."

And his statement provided:

15 "The injustices and inadequacies of the Native Title system had been starkly exposed by the December 2002 negative High Court decision in the Yorta Yorta matter claim. In the Victorian context, the Yorta Yorta decision suggested that litigation of Native Title was virtually impossible and the land justice would require very different arrangements."

20

During his evidence, he confirmed that from 2003 to 2014 he was the chair of the Native Title Services Victoria, so he was right in the centre of those discussions. In his evidence to Yoorrook, he spoke of the ongoing hurt and suffering. On the same panel was Marjorie Thorpe. And she said that:

25

"On hearing of the result in the decision, it was devastating. It was devastating, and I think to see that happen to the Yorta Yorta people was of concern to other groups and how they would fit. I think we were quite naive when we went into this Native Title process. I think the legislation is flawed from the start and doesn't really address the needs of the First Peoples in this country."

30

Evidence from Karen Jackson on 15 April, she was devastated by the High Court's decision. She said:

35

"I was really devastated at the time and I still get emotional about that time. I was there when that decision was handed down, and I just couldn't contain myself. There was so much horror and pain in that decision. I Got on the train and cried all the way back to St Albans thinking, 'What the hell just happened?'"

40

She said:

45 "That can't be right, because Yorta Yorta is so strong and Yorta Yorta has always had connection. Yorta Yorta mob are everywhere. We talk about Country and we are connected to that space and we know that space. It was one of the worst days of my life. It was a shock. It happened based on white

man's story not a blackfella's story, and all of that telling of connection and belonging."

5 There will - was also a land justice round table held with the Dja Dja Wurrung Clans Aboriginal Corporation in Bendigo on 25 November 2023, and at that round table Uncle Gary Murray said words to the effect that:

10 "The Native Title process contributes to genocide because it erases distinctions between clan groups."

Uncle Gary explained that small groups such as the Waywurru and the Ngurai Illum and the Beruk were effectively erased as a result of the Yorta Yorta decision. He then suggested that as a result of the new evidence prepared by those groups of the land included in the Yorta Yorta claim, there were grounds to make a section 13 variation application under the Native Title Act to reopen the Yorta Yorta decision.

20 We're also aware, and we understand that you may have been made aware, Minister, that there is correspondence to the Attorney-General referred to in a brief from November 2008 in which Gary Murray on behalf of the Waywurru and Dhuduroa Native Title group raised again on that occasion the use of section 13 of the Native Title Act to go back and have a look at their decisions in relation to Native Title in this State. Are you familiar with section 13 of the Native Title Act, Minister?

25 **THE HON. NATALIE HUTCHINS:** I am.

30 **MR McAVOY SC:** And do you have any - or does - sorry, does the State have any position about whether the section 13 of the Native Title Act may be used to revisit some of the matters that First Peoples have described as injustices?

35 **THE HON. NATALIE HUTCHINS:** Before I come to that, if I could just acknowledge the terrible outcomes that Yorta Yorta people faced with that decision being made, and to say that I've - I've heard directly, I've - I've been significantly yelled at for a long period of time in meeting with Yorta Yorta leadership post - coming into the role the first time. And I'm disappointed that the government of the day took the decision they did with the submissions that they put into that here in Victoria, and I apologise that that happened. I am always open to discussing reactivity of claims. I've not had that expressed to me by any of the Yorta Yorta leadership as being a desire at the moment, but that's not to say it isn't. I don't know. It's not something that's been expressed to me. But I guess Traditional Owner groups are welcome to approach the State around support in their Native Title claims going forward. I think we are a completely different government to the one that - that really contributed to the further dispossessions and cultural acknowledgements of the Yorta Yorta back when this case was heard.

MR McAVOY SC: Thank you. So is the message that comes from the evidence that you have just given, that if the Yorta Yorta people wanted to make some representation to the State about the application of section 13 to revoke or vary the determination in their proceedings, it's something that the State would give full
5 consideration to?

THE HON. NATALIE HUTCHINS: Yes, I would - I would talk to them in good faith with that.

MR McAVOY SC: Excuse me, Commissioners, my learned friend raised an issue with me. I think we're resolved, and I propose to move on from that issue anyway. Now, I just want to go to the Traditional Owner Settlement Act, as foreshadowed by Mr Goodwin before lunch. The paragraph, or the paragraphs of your statement which attempt to deal with the Traditional Owners Settlement Act are 257 and 258
15 of your statement. Do you wish to follow, Commissioners, and you might turn there, please, Minister. So you have described the Traditional Owner Settlement Act in paragraph 257 as a:

20 "Recognition of Traditional Owner group rights in all public lands and waters within a defined geographical boundary".

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: Further that:
25

"The return of public land through grants of freehold and Aboriginal title."

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And that:
30

"Aboriginal title is the grant of public land to Traditional Owners for the purpose of joint management with the State."

35 Yes?

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: Which is conditional on the Traditional Owner group
40 agreeing that the State continues to manage the land in partnership with them?

THE HON. NATALIE HUTCHINS: Yes, that's correct.

MR McAVOY SC: Then at paragraph 258, there is a reference to:
45

"Ongoing procedural rights and compensation in relation to the proposed future uses of public land".

THE HON. NATALIE HUTCHINS: Correct.

5 **MR McAVOY SC:** And funding in lieu of Native Title compensation for acts done -

THE HON. NATALIE HUTCHINS: Yes.

10 **MR McAVOY SC:** - prior to the date of settlement. And for the operation of the Traditional Owner Corporation?

THE HON. NATALIE HUTCHINS: Yes, that's correct.

15 **MR McAVOY SC:** So by the date of settlement, it would mean the date of the agreement.

THE HON. NATALIE HUTCHINS: The agreement, yes.

20 **MR McAVOY SC:** Not 1835.

THE HON. NATALIE HUTCHINS: No, no, the agreement.

MR McAVOY SC:

25 "Access use and management of the natural resources."

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And:

30 "Joint management of certain parks and reserves."

THE HON. NATALIE HUTCHINS: Yes.

35 **MR McAVOY SC:** And finally, an ILUA, an Indigenous Land Use Agreement, under the Native Title Act to address Native Title matters.

THE HON. NATALIE HUTCHINS: Yes.

40 **MR McAVOY SC:** Now, the - there has been a response from the State in the form of a - in response to a request for information. Are you aware of that request for information from the State?

45 **THE HON. NATALIE HUTCHINS:** No, if you could give me a bit more detail.

MR McAVOY SC: It was to the Land Justice Unit under Department of Premier and Cabinet. I might just start by taking you to the maps -

THE HON. NATALIE HUTCHINS: Maps?

5 **MR McAVOY SC:** Sorry, I'll get the operator to - one moment. Now, you've got some maps in front of you.

THE HON. NATALIE HUTCHINS: Yes.

10 **MR McAVOY SC:** Now, there is a map - there is a map in front of you which sets out the areas that are subject to the - where Registered Aboriginal Parties have been approved. Can you see that?

THE HON. NATALIE HUTCHINS: Yes, yes, that one?

15 **MR McAVOY SC:** Yes, that's right. And the - there is a second map which shows Native Title and Traditional Owner Settlement Act settlements, if we can show the other - the second document, please. And if we look, we can see on that second
20 map that the - it is hard to see on the screen, but the areas which have a cross-hatching and are covered by Native Title - reference to a Native Title determination show that there is both a Native Title and a Traditional Owner Settlement Act outcome; that's correct?

THE HON. NATALIE HUTCHINS: Yes.

25 **MR McAVOY SC:** And that map largely corresponds with the first map for the Registered Aboriginal Parties.

THE HON. NATALIE HUTCHINS: Yes.

30 **MR McAVOY SC:** If you could just put those down for a moment. Now, there are some Traditional Owner Settlement Act agreements with recognition of settlement agreements only; that's correct?

THE HON. NATALIE HUTCHINS: Yes.

35 **MR McAVOY SC:** And they are Dja Dja Wurrung?

THE HON. NATALIE HUTCHINS: Yes.

40 **MR McAVOY SC:** In 2022. Taungurung in 2018; that's correct?

THE HON. NATALIE HUTCHINS: Yes.

45 **MR McAVOY SC:** And there are others with Native Title settlements only, and they are the Gunditjmarra in 2010 and the Gunditjmarra and Eastern Maar, Part B, in 2011.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And the Eastern Maar peoples part 1 in 2023.

5 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: The dual ones are the Wotjobaluk and the Gunaikurnai in 2005 and 2022 for the Wotjobaluk, and 2010, 2022 - revised in 2022, the recognition of the Settlement Act and the Native Title settlement in 2010 for
10 Gunaikurnai people.

THE HON. NATALIE HUTCHINS: Yes, that's correct.

MR McAVOY SC: So in your statement, you - this is now - if you can turn to
15 paragraph 264, you note that since 2010, an additional five Traditional Owner groups have entered into negotiations with the State for a Traditional Owner Settlement Act settlement, but these negotiations have not yet concluded, and also that:

20 "Groups either sought to prosecute their Native Title recognition by the Federal Court or there were ongoing difficulties in resolving questions about the appropriate Traditional Owner for the Traditional Owner group for Country".

25 Yes?

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And at paragraph 266, if you can just proceed to that
30 paragraph, there is an observation or a statement that:

"The State's current policy is not to support simultaneous pursuit of Native Title and Traditional Owner Settlement Act outcomes."

35 That's correct?

THE HON. NATALIE HUTCHINS: That's correct.

MR McAVOY SC: Now, in the - there is a table setting out the outcomes in the -
40 in relation to the Traditional Owner Settlement Act matters, in the - there are some late changes to the documentation that was provided in response to a request for information that my learned friend's just alerted me to. And I might give her the opportunity to just to explain those changes.

45 **MS BENNETT:** Apologise, Commissioners. In the course of appearing this morning, we have identified errors in the tables. We've corrected them by hand - or I've corrected them by hand and insertion. We have emailed them to our friends

the instructing solicitors. And what I propose to do is seek to replace - there are two pages affected one at page ending 0097, and one figure at page - which is a consequential change at page 0092. I can hand up those hard copies with my handwritten change to reflect those changes that could perhaps form the tendered
5 version of the document if that assists the Commission, while the markup has been provided to the solicitors assisting, so that we can make sure that we have the right figures. I apologise for the error and it was inadvertent and identified very recently in the course of the preparation for today.

10 **MR McAVOY SC:** Commissioners, I think - weight - I don't think anything turns on the updated figures. It's not an issue we wish to pursue in any way, and perhaps the amended version could be provided to the Commission in due course rather than a handwritten markup. So the document we're talking about is the Native Title 1993 and the Traditional Owner Settlement Act 2010 Land Justice Unit,
15 Department of Premier and Cabinet response to a request for information. Do you have that in front of you?

THE HON. NATALIE HUTCHINS: Yes, I do.

20 **MR McAVOY SC:** Now, what I would ask you to do is turn to page - sorry - page 96 of that document where you can see the table.

THE HON. NATALIE HUTCHINS: Maybe I don't have that. Because - I've got a paper that is only got 37.

25 **MR McAVOY SC:** So it's -

THE HON. NATALIE HUTCHINS: Yep.

30 **MR McAVOY SC:** In the top right-hand corner, you will see some numbering.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And the document we're looking at is, in fact, table 5, I think.
35 On your document, you can see a table 5, Native Title Determinations - my apologies, Commissioners, sorry, table 11, Commissioners, I am sorry. With all this changing around, I've got myself a bit confused here. So you can see table 11. And table 11 is the outcomes committed to up to October 2023 for Traditional Owner groups under the Traditional Owner Settlement Act 2010.

40 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: You can see that. It lists four Traditional Owner groups, the Gunaikurnai, Dja Dja Wurrung, Taungurung and Wotjobaluk, Jaadwa,
45 Jardwadjali, Wergaia and Jupagulk peoples.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: That table sets out various aspects of the settlement agreements that were entered into by those groups. The - in the left-hand column, you can see that there is a reference to settlement package quantum, yes?

5

THE HON. NATALIE HUTCHINS: Yes, yep.

MR McAVOY SC: And in that column, in the - you will see, firstly for the Gunaikurnai, there was a 2010 payment of \$18,923,472 -

10

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: - over four years, and a similar payment in 2022, 18,816,000 over four years.

15

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: With respect to the Dja Dja Wurrung a payment in 2013 of 12,050,000 over four years, and in 2022 a payment of 36,305,000 over five years.

20

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER NORTH: What is the reference, Mr McAvoy, to the ongoing amount?

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MR McAVOY SC: I will ask the Minister. You understand the reference to the ongoing amounts?

THE HON. NATALIE HUTCHINS: I actually don't, no.

30

MR McAVOY SC: They are payments that are made annually -

THE HON. NATALIE HUTCHINS: Outside of the - outside of that stipulated, yes.

35

COMMISSIONER NORTH: But they are prepared at the end of that specified period of four years. The initial amount is over four years, and then after four years until the new figure in 2022.

40

MR McAVOY SC: Yes, Commissioner. Those payments are ongoing to fulfil the obligations of the Traditional Owner body according to the LUAs and the operations of the Traditional Owner body, so they are ongoing amounts in addition to - in addition to the amounts that are specified. Similarly for Taungurung people in 2018, there is a figure of \$29,380,250 over four years with an amount of 1,594,000 ongoing, and for the Wotjobaluk and other groups in 2005, there was 2.4 million over five years, and in 2022 up to 47,060,000 over five years and 2,570,000 ongoing. Those payments, though, they are payments - the lump sum

45

payments are said to be in payment of all compensation liability for Native Title. Is that correct?

THE HON. NATALIE HUTCHINS: Yes, I believe so.

5

MR McAVOY SC: That's the terms of the agreement that the Traditional Owner bodies are required to execute, that they won't bring a compensation claim under the Native Title Act?

10 **THE HON. NATALIE HUTCHINS:** I might have to get some more information on that.

MR McAVOY SC: We can get that information from other sources, Minister. That's okay. Now, in the next row, we see the agreement area. And in each of the cases, the agreement area is substantially - and measured in areas of square kilometres, thousands of square kilometres, so for the Gunaikurnai 22,800 square kilometres.

15

THE HON. NATALIE HUTCHINS: Yes.

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MR McAVOY SC: For the Dja Dja Wurrung, it is 17,270 square kilometres, and similar figure for the Taungurung, and for the Wotjobaluk and other groups it is 35,830 square kilometres is the settlement agreement area. Now, the Crown land in all of those cases takes up some substantial amount, but perhaps with the Dja Dja Wurrung standing out as only making up approximately 2,700 square kilometres of the total of 17,000. Can you see that?

25

THE HON. NATALIE HUTCHINS: Yes, I can, yes.

30 **MR McAVOY SC:** But in the other cases, it is closer to 10.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: Give or take, you know, 10,000 square kilometres. If we then go over the page. And we have the Aboriginal title land; you can see that?

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THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: The Aboriginal title land, can you just explain to the Commissioners what the Aboriginal title land is in the Traditional Owner Settlement Act? You've referred to it in your statement, Minister. It's the land that's transferred but it's subject to condition that its operated and managed as a National Park, isn't it?

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45 **THE HON. NATALIE HUTCHINS:** Yes, that's correct. And I have got a list here. For example, Gunaikurnai in their recognition in 2010 had Aboriginal title

over Knobs Reserve and Mitchell River, Tarra-Bulga National Park, I could go on; there is quite a large list.

5 **MR McAVOY SC:** Yes. So there's a significant number of parks that have been made the subject of Aboriginal title.

THE HON. NATALIE HUTCHINS: Yes.

10 **MR McAVOY SC:** But all of that Aboriginal title is subject to the condition that it's operated as a National Park.

THE HON. NATALIE HUTCHINS: That's correct.

15 **MR McAVOY SC:** And it's - the arrangement is a joint management arrangement, yes?

THE HON. NATALIE HUTCHINS: Yes.

20 **MR McAVOY SC:** And the Traditional Owners, it's not like it's freehold title, is it?

THE HON. NATALIE HUTCHINS: No, it's not.

25 **MR McAVOY SC:** The Traditional Owners can't build a house on the land.

THE HON. NATALIE HUTCHINS: No.

30 **MR McAVOY SC:** They can't sell it, they can't agist it for - to raise funds to agist animals on it. They can't farm it.

THE HON. NATALIE HUTCHINS: Yes, that's correct.

35 **MR McAVOY SC:** To be operated as a National Park. So in effect, it is a continuation of the property as a National Park with some joint management responsibilities; is that fair?

THE HON. NATALIE HUTCHINS: That's fair.

40 **MR McAVOY SC:** So then we move to the column or the row below which sets out the freehold title land. So just so we are clear, that is land that is transferred under the Traditional Owner Settlement Act as ordinary freehold title?

THE HON. NATALIE HUTCHINS: Can I get you to repeat that, sorry?

45 **MR McAVOY SC:** So the freehold title referred to in the last -

THE HON. NATALIE HUTCHINS: Box, yes.

MR McAVOY SC: The last row of that table, when these a reference to "freehold title" or "freehold land" in the Traditional Owner Settlement Act, it is a reference to ordinary freehold.

5

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: Ordinary freehold you can take a mortgage over, you can lease, you can develop and you can live on and you can do everything that people expect to do with their freehold land. And so -

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THE HON. NATALIE HUTCHINS: Yes. I think - so - is it still subject to - still subject to Local Government regulation.

15

MR McAVOY SC: Of course. It's a freehold land in the way that ordinary freehold is -

THE HON. NATALIE HUTCHINS: Yep.

20

MR McAVOY SC: - subject to planning regulations and environmental regulations.

THE HON. NATALIE HUTCHINS: Yes.

25

MR McAVOY SC: The point I am getting to is that the figure for - the figure for the Gunaikurnai in terms of the freehold land they get, the land that they actually get in the same form as everybody else has their land, is approximately 159 hectares; is that correct?

30

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: That's correct. Out of a total of - what did we say, 22,800 square kilometres of land that the outcome is that they receive 159.82 hectares; that's correct?

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THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And you'd agree with me that is a speck in terms of the vast amount of land over which the agreement's been struck?

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THE HON. NATALIE HUTCHINS: Yes, it's a small amount in comparison to the rest, yes.

45

MR McAVOY SC: And the rest of the land, even though it might not sit on all fours, the rest of the land might be given as a guide of what their traditional estate was.

THE HON. NATALIE HUTCHINS: That's correct.

MR McAVOY SC: So out of their - the traditional estate that they possessed as at the date of settlement there, as a result of the agreements, the best that could be
5 done for the Gunaikurnai was 159.82 or three hectares; that's correct.

THE HON. NATALIE HUTCHINS: That's - that's - yes, that is the facts.

COMMISSIONER WALTER: Excuse me, Mr McAvoy, can we just confirm
10 that is less than one per cent of the total land?

THE HON. NATALIE HUTCHINS: I don't know that.

COMMISSIONER WALTER: I've done the maths here on my calculator; it
15 looks like it is .7.

MR McAVOY SC: Yes, I haven't done that calculation myself, Commissioner. We can get those calculations done and perhaps provide them to you during the course of this hearing block. Similarly, for the Dja Dja Wurrung, their - the land
20 that was recognised as included in their agreement was 17,370 square kilometres and their total freehold lands is 111.541 hectares. You're nodding your head. I mean -

THE HON. NATALIE HUTCHINS: Sorry, yes.
25

MR McAVOY SC: The figures speak for themselves, they speak for themselves, yes. For the sake of completeness, I will just restate the Taungurung people - their settlement area was 20,210 square kilometres and the area of freehold land that was available to them under this scheme that was agreed upon was 63.43 hectares.
30

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: And finally, with respect to the Wotjobaluk and others, there was a - their settlement area was 35,830 square kilometres and there was
35 approximately 420.85 hectares with a right to first refusal purchase on a further 3.14 hectares.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: The observation that can be made from those figures, Minister, is that in terms of the Traditional Owners Settlement Act's ability to deliver to First Peoples' significant lands upon which they can live and, in the words of the co-chair of the First Peoples' Assembly yesterday as to his aspirations for his people, that they "thrive", that they be immersed in their culture, it is hard
40 to imagine how they could do that on - with less than one per cent of their former lands. Would you accept that proposition?
45

THE HON. NATALIE HUTCHINS: Yes, I would.

MR McAVOY SC: And so the upshot of that is that there needs to be some other mechanism or some adjustment to the Traditional Owner Settlement Act to allow
5 for a much, much broader delivery of traditional lands to First Peoples to - as freehold and not otherwise encumbered. Would you agree with that proposition?

THE HON. NATALIE HUTCHINS: I would say that that is no doubt a key
10 consideration between the Treaty process.

MR McAVOY SC: And it's reasonably well-known, I would submit to you, that
it's reasonably well-known that there is very little in the way of available Crown
land for distribution left in Victoria. It's either been privately acquired or it's in the
conservation or forestry estate?

THE HON. NATALIE HUTCHINS: To be honest, I haven't done an assessment
on what Crown land is available in these particular areas. I do want to say that I do
fundamentally believe that Traditional Owner settlement as a piece of legislation
was also founded to give recognition to the Traditional Owner groups in that area,
20 and I know we're talking about land justice, but I also think that there's - through
the process that we have undertaken, there's been great recognition given through
this process. Is the process perfect? No, that's why we looked at the First
Principles Review. Are these delivering the outcomes for Traditional Owner
groups that they anticipated when they started negotiations? Possibly not. Is that
25 why, you know, one of the reasons why we are on the path to Treaty? Yes, it is.

COMMISSIONER LOVETT: Just, Minister, hearing those figures and we get
the actual figures around, but potentially them being less than one per cent
freehold, being able to do that, like, how does that sit with you? Do you have any
30 response to that? Like, how does that make you feel when you just hear that as
evidence?

THE HON. NATALIE HUTCHINS: I feel disappointed that the land holdings
are so low, but I also at the same time recognise that if we had not put anything in
35 place as a government and replied just on Native Title after the experience of
Yorta Yorta, we may not have had the recognition that we have around Traditional
Owners that have been recognised through this process. Do I think we could
improve it? Yes, that's why we agreed to a review, and that's why we are on the
path to Treaty.

MR McAVOY SC: Perhaps the Traditional Owner Settlement Act can be
40 described as a creature of its time, Minister.

THE HON. NATALIE HUTCHINS: Yeah, perhaps.

MR McAVOY SC: It was created to fill a certain gap that was identified, and its
45 utility going forward, we, I would suggest to you, and the First Principles Review

would also suggest to you, require some substantial adjustment for a significant role.

5 **THE HON. NATALIE HUTCHINS:** And - and can I make the point in recent years, the Traditional Owner Settlement Act never sat within the responsibility of the Minister for either Aboriginal Affairs or Treaty or First Peoples, that it was solely in the purview of - purview of the Attorney-General, and I think it's been a fantastic step forward to move the responsibility of that.

10 **MR McAVOY SC:** Now, page 19 of the - that RFI that I took you to - you don't need to go there, but you can if you want to - states that the following areas of freehold were committed to be returned to - returned as part of the RSAs, so for their - with respect to the return of the 159 hectares to the - I think it's the Gunaikurnai, 159 hectares of freehold, then the Dja Dja Wurrung 111 hectares of
15 freehold, and the Taungurung 63 hectares of freehold, and the Wotjobaluk 420 hectares of freehold. It's explained in pages 21 and 22 of that response that the State has only returned freehold land promised to the Dja Dja Wurrung, and that the return of land with respect to the others is still pending. Is that correct?

20 **THE HON. NATALIE HUTCHINS:** Still, I didn't catch the last -

MR McAVOY SC: Is still pending, that it hasn't actually been returned. Is that - is that your understanding?

25 **THE HON. NATALIE HUTCHINS:** To be honest, I have not been briefed about that still being pending.

MR McAVOY SC: It would be a -

30 **THE HON. NATALIE HUTCHINS:** I am happy to come back with further information.

MR McAVOY SC: Well, we might be able to get that information from Mr Cowie.

35 **THE HON. NATALIE HUTCHINS:** Yes, yes.

MR McAVOY SC: It would be concerning, wouldn't it, that if these agreements had been reached in 2022 and 2018, 2022, that the delivery of the lands are still
40 outstanding?

THE HON. NATALIE HUTCHINS: It is concerning, yes.

45 **MR McAVOY SC:** But not only is the amount such a small portion of the remains of their country, but that it's still awaiting return. Now, if I can take you to paragraph 270 of your statement, please, Minister. Can you see at that paragraph that there is a reference to:

"Rights under the Traditional Owner Settlement Act are recognised over 32,920 kilometres of public land with Native Title also recognised over part of this land."

5

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: We are talking about national parks and conservation estates where there is joint management arrangements?

10

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: So that's the reference in the same paragraph to:

15

"Victoria having returned or committed to return 2,287,594 hectares of land as Aboriginal title under recognition of the settlement agreements."

And so the designation of that land as Aboriginal title, notwithstanding the misgivings about what that actually means, combined with the arrangements for joint management, it's not an insignificant outcome; you'd agree with that?

20

THE HON. NATALIE HUTCHINS: It's not insignificant, but, you know, we've heard through reviews and meetings and consultation that it can improve.

MR McAVOY SC: And so where you refer in that same paragraph that as of October 2023 to the State returning or committing to return 576 hectares of public lands in freehold grants, that's the total of those figures that we looked at in that table, isn't it?

25

THE HON. NATALIE HUTCHINS: Yes, I think so, just looking at the reference, yes.

30

MR McAVOY SC: On page 1 of - sorry, page 21 of the first request for information response, we understand that the State has returned, if I can put it this way, and I think this is the same list you were returning to:

35

"The State has returned these lands in Aboriginal title."

So there's nine national parks or reserves, five national parks reserves for the Dja Dja Wurrung, nine national parks and reserves for the Gunaikurnai, but that the State has not yet delivered its commitment to return the following lands as Aboriginal title, the Greater Bendigo National Park, which was committed in 2013 in the 2013 RSA with Dja Dja Wurrung, Gippsland Lakes Coastal Park and a small remaining park, part of Lake Tyres State Park committed in the 2010 RSA with Gunaikurnai, nine national parks and reserves committed in the 2018 RSA with Taungurung, and four national parks committed in 2022 with the 2022 RSA

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45

with Gunaikurnai, and a further 12 national parks and reserves committed in 2022 RSA with the Wotjobaluk group.

5 What those - that information tells us, I suggest to you, Minister, is that there is a bit of a difficulty with - between the entry into these agreements and the formal return of - the return of the lands, if we can put it that way. Do you have any oversight as to the transfer of those lands to the Traditional Owners?

10 **THE HON. NATALIE HUTCHINS:** Do I have oversight? Yes, do I have the detail of the reasons why things have stalled? No, I don't.

MR McAVOY SC: It's something you could obtain information about?

15 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: Would you agree that the commitment in 2013 - in the 2013 Recognition Settlement Agreement with the Dja Dja Wurrung people to return the Greater Bendigo National Park, which has still not been returned, is on its face a matter of concern?

20 **THE HON. NATALIE HUTCHINS:** It is. I'm - and in previous - in previous responsibilities in my role before taking on the Traditional Owner Settlement Act as a part of the portfolio, and Native Title, I have been involved in other transfers of land, and been quite taken aback at the time that it has taken and the level of bureaucracy that we've had to go through for a transfer of just a small parcel of land. I am thinking about (indistinct) when we did a handover on the back of that, took probably three years at that time. And I honestly don't have a reason as to why those things have taken so long, but I'm happy to investigate and report back.

30 **MR McAVOY SC:** Is it something that could possibly be a result of departmental inertia?

35 **THE HON. NATALIE HUTCHINS:** Certainly, you know, I don't feel like that is inertia of my own immediate department of the Treaty and First Peoples. I think there are significant holdups when it comes to transfer and title of land anywhere. I can't tell you why.

40 **MR McAVOY SC:** On its face, 11 years since the recognition and settlement agreement for the Dja Dja Wurrung with respect to the Greater Bendigo National Park seems to be an extraordinary amount of time.

THE HON. NATALIE HUTCHINS: It does, and I'm happy to take it up.

45 **COMMISSIONER LOVETT:** Really important point, because, Minister, you know, we understand as a people and that Treaty negotiations as a statewide level will happen relatively pretty soon, but ultimately, I think you said earlier, before 2026. Secondary to that, there's also been commitment to Traditional Owner

treaties which will naturally be undertaken after that, so that's still several years down the track for Traditional Owners to be having to be waiting in hope and anticipation that their aspirations will be met, but realised.

5 Still a long, I guess, key word time again, for them to be waiting. They could be waiting a number - a number of years, for them to realise and have their rights recognised, and beyond recognised, and we fought really hard for not only recognition but also for the rights to be realised, and we give up a lot. As we've
10 heard from Traditional Owners across the state that we've met with, as I have said before over 850 expressing their views around these particular matters, whether it be Native Title, Traditional Owner settlement or the registered Aboriginal party process. So they've put things aside to be able to come forward. And they've gone through trauma to get there as well, and I just think that, you know, time, again, is - if you have anything to sort of say to the groups waiting to negotiate the
15 Traditional Owner treaties, around just giving them confidence?

THE HON. NATALIE HUTCHINS: Just to say that as Minister I am happy to follow up on those parcels that have not been progressed, particularly the ones that you've pointed out, but happy to have a look at the whole thing. In terms of a way
20 forward with the Treaty process we have always said treaties will be on the table not just Treaty. And we do believe that these can happen concurrently into the future on a Traditional Owner geographical basis.

COMMISSIONER NORTH: Minister, you said before the lunch break that you saw Treaty as being, if you like, different to what had happened to date because,
25 from the Government's side, the people that would be coming to the table, I think you said, would have appropriate authority.

THE HON. NATALIE HUTCHINS: That's correct.
30

COMMISSIONER NORTH: What does that mean?

THE HON. NATALIE HUTCHINS: It certainly means that the negotiators will have the capacity to make commitments without having to take a, you know, a
35 briefing back through a particular department, that they can make commitments at the table whilst they are negotiating. In terms of implementation of the ongoing arrangements, agreements that are in place, then there needs to be, as I have seen work successfully in other countries, an independent body that plays a role in that.

40 **COMMISSIONER NORTH:** A role of monitoring or -

THE HON. NATALIE HUTCHINS: Yes, monitoring.

COMMISSIONER NORTH: That would be a radical change in governmental
45 process, wouldn't it, if there were - the people at the negotiating table able to say on the spot, "Yes, that will go ahead. Yes, the reparation package will be" whatever the dollar figure is.

5 **THE HON. NATALIE HUTCHINS:** Yes, it is - the whole process of truth-telling and Treaty is a radical process for any government, and that is why there's some resistance on the other side of politics against this. People are scared of change, but what we're - what we're hearing today, what you are hearing every day, through these hearings is that there is need for change, there's need for radical change.

10 **COMMISSIONER NORTH:** Thank you.

MR McAVOY SC: I think that Commissioner Lovett may have picked this up, Minister, but I will just draw to your attention that in a media release dated 28 April 2010 by the Premier, it was said that:

15 "The Traditional Owner Settlement Act would achieve firstly that Native Title claims in Victoria will be resolved faster, fairer and in a less costly manner."

20 And the faster aspect of it seems to have been lost, is the only conclusion that can be drawn. Mr Brumby said:

25 "The Traditional Owner Settlement Bill is a faster way to resolve claims than under the Native Title Act which proved to be too technical and costly to deliver justice to indigenous Victorian communities. The Traditional Owner settlements under the Framework will deliver quicker outcomes, finality and certainty for all those involved in and affected by the Native Title process."

30 And I think it's fair to say that those things that were sought to be avoided in the Native Title process seem to be firmly wedged into the Traditional Owner Settlement Act process at the moment, and they were - the fairness aspects have been addressed in the Traditional Owner Settlement Act - the First Principles Review and we have heard about the delivery of outcomes taking what might be described as an inordinate amount of time.

35 Now, in a further press release Mr Hulls, the then Attorney-General, said, "Prior to the agreement regarding - " this is regarding the first recognition and settlement agreement under the Traditional Owner Settlement Act in a media release dated October 2010. Mr Hulls said:

40 "Prior to the agreement under the new law, the Gunaikurnai claim had been in court for 13 years."

45 That on its face sounds like a long time but we are now talking about another 11 years for delivery under a recognition and -

THE HON. NATALIE HUTCHINS: Yes.

COMMISSIONER HUNTER: Can I just - we talked about timeliness before, I know it's sort of the theme of the day. If we think about the trauma, when we talk about what happened during colonisation, do you think this case specifically, how much more trauma that adds on to our people? Like, that's a long time.

5

THE HON. NATALIE HUTCHINS: I have no doubt, but at the same time if we didn't have a Traditional Owner Settlement Act and we were just totally reliant in those years on Native Title, would we have progressed any further? And I'm not saying that that is an excuse; I'm just saying that that is the reality. We have had a lot of investment in ensuring that we have got the right people for Country through this process, and I think that that has been a real positive - positive outcome. Has the delays in obtaining the agreements or the flow-on of the agreements affected First Peoples' wellbeing? Yes, probably it has, yes.

10

15 **COMMISSIONER HUNTER:** The whole process to getting - like, that's -

COMMISSIONER LOVETT: And we have to jump through a colonial process to prove our identity. I think I just wanted to make - add that point there.

20 **THE HON. NATALIE HUTCHINS:** Sorry, Commissioner, that is absolutely a great point to make, that it is a white man's system that we are trying to apply to First People's law and connection, and, you know, we can see that there are failures in that.

25 **COMMISSIONER LOVETT:** It's important to note as well that outside of that, people Traditional Owners having Native Title there have been four Traditional Owner settlement agreements. Obviously the others had Native Title already. Just another point to make.

30 **MR McAVOY SC:** In evidence to this Commission, the First Nations Legal Service observed with respect to the Traditional Owner Settlement Act that it's increasingly difficult to finalise an RSA, a key problem being the lack of a determinative process for resolving issues of group composition and boundary disputes, and they are issues that you are aware of, Minister?

35

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: That further - that despite government's provision of resources to assist with mediation, without recourse to the court or another determinative process, groups have been unable to negotiate or finalise RSAs or Native Title settlements; do you agree with that assessment?

40

THE HON. NATALIE HUTCHINS: Yes.

45 **MR McAVOY SC:** Further, at day 6 of this hearing block, witnesses from First Nations Legal and Research Service made the following statements regarding the

failings and shortcomings of the Traditional Owner Settlement Act and Native Title regimes. And I'll just take you to some of those:

5 "Often some of the land that is offered with the transfer under the Traditional Owner Settlement Act is not land that is necessarily useful, and then with ownership there comes the cost of maintaining the land, so yes, sometimes there has been a transfer, but at other times what is on offer as well. You are only offering this because it was not useful to the State, so it is not always as good as what it can appear."

10

And so are you aware that that might be part of the process, that the leftover pieces of land that are difficult to manage might be forming part of the Traditional Owner settlement package?

15 **THE HON. NATALIE HUTCHINS:** No, I'm not. I'm not aware of that, that is some sort of internal policy, no.

MR McAVOY SC: You would accept that they might be the pieces of - parcels of land that are leftover, indeed the ones that are not wanted by anybody else?

20

THE HON. NATALIE HUTCHINS: I don't know that to be necessarily true.

MR McAVOY SC: It was also stated in evidence:

25 "The promise was that there was going to be settlements and they would be quicker than the Native Title process, but I think in the context of the difficulty in what we talked about before, groups coming together and resolving issues and disputes, very much a legacy of dispossession made reaching an agreement is very difficult."

30

You would not disagree with that observation?

35 **THE HON. NATALIE HUTCHINS:** No. Could I make the point in my statement at 282 that I do acknowledge that the State can be more creative in how we approach land justice and land injustices and how we can work better to - and I make that commitment there, and then further down as acknowledging that the campaign that had been run by multiple, multiple First Peoples leaders are some of the longest running campaigns that have been as part of our history here. And I really do believe that the path that we are on with Treaty - and I know I keep coming back to that - will help put us on a better path with land justice.

40

45 **MR McAVOY SC:** I'll just say this much, Minister, there was other evidence from other people, even this week, are going to the difficulties with the Traditional Owner settlement process, but to be fair, there was evidence in support of the Traditional Owner Settlement Act from Uncle Graham Atkinson, and so the criticisms - I suggest to you that the criticisms are expressions of frustration as to the Act not reaching its potential, if I can put it that way. Now, I just wanted to ask

you some questions about the Aboriginal cultural heritage process, and that will be my last series of questions. I note that it is 3.15 and we've been going for just a bit over an hour and I might suggest just a short break, five minutes.

5 **THE HON. NATALIE HUTCHINS:** I'm okay if you want to continue, I'm okay, but if you -

COMMISSIONER HUNTER: If the Minister's fine with continuing, then -

10 **MR McAVOY SC:** I'm in your hands, Commissioners.

COMMISSIONER HUNTER: I am happy to go.

MR McAVOY SC: Thank you. Minister, I have probably another 10 minutes.
15 Please let me know if you'd like to have a break. You are familiar with the Taking Control of Our Heritage Report.

THE HON. NATALIE HUTCHINS: Yes.

20 **MR McAVOY SC:** And you're familiar with the recommendations in that report?

THE HON. NATALIE HUTCHINS: Yes, I am.

MR McAVOY SC: There were 18 recommendations, and that report was
25 delivered by the Aboriginal Heritage Council in April 2021.

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: Is there anything you can say to the Commission about the
30 Government's position with respect to that report?

THE HON. NATALIE HUTCHINS: Just to say that I want to thank the
Victorian Aboriginal Heritage Council for their work that they've done on - on
35 this, and really acknowledge that our - our current laws are set up in a way which
require, I guess, that balance round how we manage developments and - and how
we protect our Aboriginal culture, and in terms of - of the outcomes from their
review, I can consider really internally how we continue to work on those
recommendations with the Council in implementing some of the changes that we
40 know need to happen.

MR McAVOY SC: In submissions or evidence to this Commission, Minister, the
First Peoples' Assembly of Victoria has identified the cultural heritage reform in
response to that report as one of the urgent items which requires action and that
45 shouldn't wait for the Treaty process. Do you have any response to that
suggestion?

THE HON. NATALIE HUTCHINS: Yeah, and there is opportunities for us to make some changes, and we're getting some advice around that, and we're keen to do what we can around looking at the regulations related to - to the Act that monitors this, and also looking at the resources that are needed for our Traditional
5 Owner groups to be able to continue to carry out the work under this Act.

MR McAVOY SC: The Federation of Victorian Traditional Owners Corporation proposes that the State accept all the recommendations of the Aboriginal Heritage Council, all 18, noting importantly the recommendation 4 which would veto -
10 which would provide registered Aboriginal parties a veto power for the destruction of cultural heritage as a particular recommendation that ought to be adopted. So in terms of action, is there any - is there anything that you can say to this Commission in terms of the timing of the State's movement on this report?

THE HON. NATALIE HUTCHINS: Well, it's an internal document and we're getting on with actually looking at the recommendations and implementing some of them. And when I say, "some of them" some of them are more practical and can be considered now. For example, supporting the recommendations around self-determination for the Heritage Council, changing its name, employing its own
20 staff directly and having autonomy away from the current arrangements with DPC. They're things that we are getting underway and working on. But there are more significant changes that are in the recommendations like the transfer of decision-making powers that we believe should be on the table for negotiations during Treaty process.

MR McAVOY SC: Is there going to be a formal description of that process of those matters which are being put off to the Treaty and those which are going to be acted on more immediately?
25

THE HON. NATALIE HUTCHINS: Yeah, and that will be communicated through a meeting of myself and Victorian Aboriginal Heritage Council in the future - the near future.
30

MR McAVOY SC: Near future?
35

THE HON. NATALIE HUTCHINS: (Nods head).

MR McAVOY SC: There was also a submission from the Taungurung people which refers to:
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"Additional relevant considerations which might include the development of a national framework for the protection of cultural heritage, support for devolution of Aboriginal Heritage Register to an in-house Taungurung digital record for protection of the larger areas of country as being culturally
45 sensitive to the Taungurung people."

In an environment where the State is properly considering the transfer of power for a range of things to the First Peoples group or First Nations, is transfer of power for cultural heritage decision making one of those matters that is on the table?

5

THE HON. NATALIE HUTCHINS: I think certainly the keeping of data is definitely something that will be given conversation between the Treaty process.

MR McAVOY SC: That's not the question I asked.

10

THE HON. NATALIE HUTCHINS: Sorry, I might have misunderstood.

MR McAVOY SC: The question is, is the decision-making power with making decisions on protection of sites and places?

15

THE HON. NATALIE HUTCHINS: I believe that that power currently sits with our registered Aboriginal parties. Are you saying shifting that to another format?

MR McAVOY SC: Well, if there is a Traditional Owner group -

20

THE HON. NATALIE HUTCHINS: Outside of the registered parties? Yes, that is something we can give consideration through the Treaty process.

MR McAVOY SC: The DJAARA noted in their submission it asked the State to amend the Aboriginal Heritage Act to include those recommendations. And that's just another submission in support of the implementation of those recommendations. So you have responded to this report's recommendations in some sense, Minister, at paragraphs - paragraph 222 of your statement. If you could look at that for a moment.

25

30

THE HON. NATALIE HUTCHINS: Yes.

MR McAVOY SC: "I believe that the - " you say at paragraph 222:

35

"I believe that Victoria's Aboriginal cultural heritage protection management system is strong in terms of both Aboriginal rights and in terms of industry behaviour."

THE HON. NATALIE HUTCHINS: Yes.

40

MR McAVOY SC: That's your view?

THE HON. NATALIE HUTCHINS: Yes.

45

MR McAVOY SC: Further, at paragraph 223, you say:

5 "I recognise the work of the Aboriginal Heritage Council including its report (indistinct) heritage and I am committed to working - continuing to work with the Council and Traditional Owners on the continued and strengthened protection of Aboriginal culture and heritage under the AHA as we work to this goal."

So -

10 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: That's a commitment that you've - that you've made in your statement to continue that work?

15 **THE HON. NATALIE HUTCHINS:** Yes.

MR McAVOY SC: And at paragraph 224, you also acknowledge that:

20 "Instead of advancing plans for strengthening of cultural heritage, Traditional Owners' efforts may often be focused on minimising harm caused by developments and other land uses."

And that's a - that's an observation you have made from your experience, is it?

25 **THE HON. NATALIE HUTCHINS:** Yes, it is.

MR McAVOY SC: Then at paragraph 237, you observe that:

30 "Victoria's Aboriginal cultural heritage protection system and its underpinning legislation is nation-leading. It is a model for the rest of the nation, but needs - but more needs to be done to improve Aboriginal self-determination."

Is there a foundation for that submission?

35 **THE HON. NATALIE HUTCHINS:** Yes. The - my department has recently presented to a Federal round table on cultural heritage management around, I guess, building the policy and ideas around cultural heritage management at a national level, so that - it appears to be no other state that is progressed the legislation and has done it in partnership with Traditional Owners like Victoria has
40 been able to do. I am absolutely appalled and dismayed at the responses of some other states like WA and the way that they've walked away from their - their commitments in this space, and, you know, I look forward to and welcome the opportunity for the Federal Government to step up in this space.

45 **MR McAVOY SC:** So I can tell you that in the Department of Premier and Cabinet background paper on Aboriginal cultural heritage, the DPC has informed the Commission that - in these terms:

5 "Recommendations from the council's taking control of our heritage document were considered and will inform forthcoming amendments to the Act as well as ongoing reform as of writing of 24 recommendations, 14 may be optioned for legislative reform, and 10 require additional discussions with the council."

Is that your understanding of the position?

10 **THE HON. NATALIE HUTCHINS:** Yes, but also within that, there is - we are also seeking advice around amendments to regulations as well.

MR McAVOY SC: But there's no - there's no timetable for that reform process that you're able to speak to today; is that correct?

15 **THE HON. NATALIE HUTCHINS:** Not that comes to mind, but I'd be happy to come back if there is, yes, come back to the Commission with further information.

MR McAVOY SC: Do you mean - by that response, are we to understand there may be things that are imminent?

20 **THE HON. NATALIE HUTCHINS:** In receiving advice like what we've just - what you just read out, we consider that advice, we look at what we can legitimately take forward, both through a policy process and then a legislative process. If a legislative process is not required, then we don't usually pursue it, because it saves time, and that's been a big issue we have talked about today, so -

MR McAVOY SC: Of course, you wouldn't take forward legislation if it is unnecessary?

30 **THE HON. NATALIE HUTCHINS:** Mmm-hmm.

MR McAVOY SC: One moment, Commissioners. One moment, Commissioners. They are my questions for this witness. Do the Commissioners have any questions?

40 **COMMISSIONER NORTH:** Yes, I just - for fear of overburdening you, Minister, after a long day, but I think the hearing as well as your statement has shone the light on some quite serious shortcomings, and you have very frankly acknowledged that they exist. And you have said, as I understand you, that radical change is needed in order to address many of these shortcomings, and expressed the confidence that the way many of them will be is through Treaty, and I wonder if you can just explain what gives you that confidence? Is it a question of the process, or is it something else like the people or - because unfortunately, against
45 the background of the shortcomings, I fear that some will look upon Treaty as potentially yet another way of delay. There is such a sensitivity in the Indigenous community that every time we nearly get to the finishing post, there is another

committee, another framework, another policy. And is there some reassurance you can give that the Treaty process is different? Is this radical change that you refer to?

5 **THE HON. NATALIE HUTCHINS:** I guess going off the examples of how I've
seen it successfully work with other countries, and Australia being the only
Westernised colonised country to not have a treaty with its First People, shows
that we have got so much to make up for. We really cannot waste time, and we've
heard that today about time being wasted. We cannot waste time not - not being at
10 the table and trying to sort this out. And when I had those conversations with First
Nations - with First Peoples and communities on Country in the main, back when I
started in this role, and asking what is the solution, and hearing that truth-telling is
a really important part of that solution, but an outcome like Treaty is the most
important solution. You know, and I got asked about any kind of changes I would
15 make in the time, if I could go back in time and saying I wish we had done this
sooner.

In a way, I could contradict myself and say that it's taken us eight years to get here
because we have had to build a new pathway and a new piece - multiple pieces of
20 legislation to be able to even get to this point in time. I don't think it will take as
long for other states to do it, because we already have other states looking at the
model that we've built here. And I feel that there - whilst there's a big level of
frustration that we've heard about today, I do feel that we have built a new
pathway of trust and a new bond, and part of that is the establishment and election
25 of First Peoples' Assembly, having two iterations of that now, seeing more and
more First Peoples actually voting and participating in that process, shows that
there is confidence there. And more people in government on the government's
side becoming engaged and educated and wanting to be part of the process shows
me that we are on the right path and, yes, this can deliver the outcomes that we're
30 looking for.

COMMISSIONER NORTH: Thank you.

35 **COMMISSIONER LOVETT:** Minister, I presented at a statewide Treaty
conference a couple of weeks ago at Waddawurrung country. And I asked this
question yesterday of the co-chairs, Yoorrook has a mandate and large significant
terms of reference covering a very broad range of really important matters to our
people. But we are - we do have a time frame; here we are about time again.

40 **THE HON. NATALIE HUTCHINS:** Yes.

COMMISSIONER LOVETT: What - is the Government having internal
thoughts and conversations about what ongoing truth-telling may or may not look
like?
45

THE HON. NATALIE HUTCHINS: Yes, we have. And have we reached a final
position on that? No. I think there are a number of avenues that we could look at

around ongoing truth-telling, and I do believe that it is a really important part of the process. I mean, ideally, it would be great to have completed all of the truth-telling before we get to the table of negotiation. But as we have said, time cannot wait, and I think they can concurrently continue to run together, because I think the public record, particularly at a local geographical level with a Traditional Owner group is really important, that we have an opportunity to have that on the historical record.

I know that the - all of your staff and yourselves as Commissioners have done an amazing job in the work that you have done in trying to capture that history so far, but there is so much I acknowledge that needs to be done beyond this - these hearings, yes.

COMMISSIONER LOVETT: And a follow-up question, I asked this yesterday as well, but what does a shared future look like?

THE HON. NATALIE HUTCHINS: Shared future. Well, it means handing over and sharing power and sharing resources, which comes in the form of - of many forms, and I'm not going to pre-determine some of the claims that First Peoples are going to put - Assembly are going to put on the table, but that, in a nutshell, is what it is for me.

COMMISSIONER LOVETT: Thanks, Minister.

COMMISSIONER HUNTER: Can I just ask quickly, unless anyone else has anything, so the broader public, there is a lot of work to be done with the broader public. Whose responsibility is it to bring the broader public along?

THE HON. NATALIE HUTCHINS: I think definitely myself as a Minister, but also all of our government. It has a role in doing that, but we're going to be partnering with a whole range of other community leaders from multicultural leaders through to Local Government leaders through to the Federal Government, to help us advocate and get the word out around what Treaty means and how it can benefit Victorians.

COMMISSIONER HUNTER: Also in that context, understanding the history and linking it, I know we're doing, you know, that public record part, but then we finish. So whose role is it then to make sure that the stories aren't lost, that the people can understand what happened in the past and why we need to have the treaty?

THE HON. NATALIE HUTCHINS: I think, to be honest, it's the whole of society's role to make sure that that happens. This is the resource that we've been able to give at this stage, but that doesn't mean that there won't be further resources around truth-telling, and it doesn't mean that the education stops. It needs to continue. There will be a role for government to embed that further, but I

think it's also upon our current community leaders to - all over Victoria to embrace the findings of this Commission.

5 **COMMISSIONER LOVETT:** One more - sorry, one more. I promise this will be the last one. I know it's been a long day. I have asked this previously, but is there anything further? You know, we talked about a lot of pain, suffering and trauma, also the resistance of our people through the start of this land justice period, and the significant gains that - you know, hard-fought, but significant gains they've been able to achieve. But is there anything further that you would like to say to our people who are listening in? And we've touched on various - we have talked about massacres, early colonisation back through to the deprivation and the lack of economic prosperity we are able to generate from Traditional Owner Settlement Agreements and so forth. Is there anything you have to say to our people listening in here today?

15 **THE HON. NATALIE HUTCHINS:** I'd like to acknowledge the hurt and the pain that First Peoples felt post the referendum result last year, and to remind them that there certainly were still millions of Victorians that voted yes to that process. Now, our process is not the same. It's never been the same. We've taken - we've taken the pathway of walking together and making sure that we can back up our commitments with legislation. But we want to take all people with us on this journey, because that's what helps embed power and respect, and - empowerment is what I meant, empowerment and respect. And to really fight racism, we actually need to take everyone on the journey with us in regards to this.

25 So for those who are still nervous about the journey ahead, I say don't be. I think that the investment that we've made in this truth-telling Commission and the commitments that we have made in stepping up a First Peoples' Assembly show that this government is real and serious about getting good outcomes from a Treaty process.

30 **MR McAVOY SC:** Commissioners, I might just tender documents relating to today's evidence. You will recall I tendered the witness statement of the Minister, dated 18 March 2024. We also tender the article Yoorrook Hits Back After Government Rejects Crucial Indigenous Reforms, authored by Kieran Rooney and Rachel Eddie, dated 3 April 2024, and a letter from Minister Hutchins to Mr Paul Paton, dated 5 December 2023, and finally, a letter from Minister Hutchins to the Hon. Matt Keogh MP, dated 7 March 2024. Commissioners, that evidence from the Minister concludes our witnesses for today, and the Commission will hear from further witnesses on Monday at 10 am. Tomorrow is a non-sitting day. And that concludes the proceedings for today.

COMMISSIONER HUNTER: Thank you, counsel, and thank you, Minister.

45 **THE HON. NATALIE HUTCHINS:** Thank you.

<THE HEARING ADJOURNED AT 3.41 PM