



TRANSCRIPT OF DAY 10 – PUBLIC HEARING (LAGOON SESSION)

PROFESSOR ELEANOR A BOURKE AM, Chair
MS SUE-ANNE HUNTER, Commissioner
MR TRAVIS LOVETT, Commissioner
DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner

THE HON ANTHONY NORTH KC, Commissioner

WEDNESDAY, 24TH OF APRIL 2024 AT 9:00 AM (AEST)

DAY 10

HEARING BLOCK 6

MS FIONA McLEOD AO SC, Senior Counsel Assisting
MR TONY McAVOY SC, Senior Counsel Assisting
MS SARALA FITZGERALD, Counsel Assisting
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< HEARING COMMENCED AT 9:00 AM

STEVEN KIRBY: Hello, everyone. My name is Steven Kirby. I'm a Tati Tati man. It's an honour for me to be here today. I lived in the West for a little while. But I'm
 5 here on Country today and it's an honour. And I want you to just look out there and let your minds go to the riverbanks. Of our people living on the river banks and camps smoking. Fires around, sitting around. And - I'd like to welcome you here today. I'd like to acknowledge our Elders that implanted in us cultural. To survive and how to hunt and gather when we were children. And I'd like to honour them.
 10 And I like to honour the Elders here today. And our Elders and our young people. The future. I'd like to welcome now Yoorrook to Margooya Lagoon. Welcome.

AUNTY JOYCE KENNEDY: It's so good that you are here today. And I have to say this, the famous Judge North. Thank you for coming and for being here and for
 15 Aunty. You know. We know why we're here today. We're here for the water, where he put the animals and the birds and everything, because everything works together. And we need to have water, because without water there is no life. We'll all be dead. So we need to preserve all the water that we got. And, you know, the government needs to release water into these areas because they give the water to the farmers and
 20 irrigation everything. But they forget about the main part is the ecosystem and the biodiversity, you know, because the animals and the birds and they all play a part in this too. They have to, you know, the bees are going to bring out the plants and all that. And for all their almond farms and all that, you know, like they don't understand this. It's a circle. It's a big circle. It's a calendar of events that's going on
 25 every day of the year. And it's a cycle that it just penetrates it and it moves out and it touches everything, you know. So water is very important. We got to have water in these little creeks and lagoons and everything. It supports the whole, the whole ecosystem. That's everything, you know. And government needs to understand that, that this is just not a little lagoon. Oh, no, this is life. This is life for everyone, for
 30 humans, for animals and birds and fish.

It's very important. I grew up on the Murray River. It was about a five minute walk till I was about nine, nine and a half. So the water. That's in me. And went on to say,
 35 the waters and the rivers and the creeks, and, you know, the dirty and the waters all go down like it really. It affects me. It makes me feel sad. Because I grew up on the river. It just makes me sad like, why is that? You know, like, it really affects me spiritually and you just don't, you just don't know why. Why do I feel like this? Why? You know, it's a little kid. I said, you know, see all the river, lovely water, all clean and clear. First time I've seen a boat going up the river. When I was a little kid,
 40 I thought, why is this? Why is this boat on the river? What is it doing? Well, what is its purpose? I couldn't understand that. But then boats, they made it. They made all the river all dirty. And, you know, then things started happening. I couldn't understand the changes. And then when we moved up to town, I - I didn't like that. I wanted to stay near the river. But it's very sad to see this. The water needs to be
 45 released. It needs to be flowing all the time. And all these infrastructures going in all the time. It's just, it's just ruined all our waterways. So you know the water. We need water. The animals need water.

5 **UNCLE BRENDON KENNEDY:** So we have a beautiful dancing. You might notice our girls. Tati Tati, but they Wurundjeri too. Wurundjeri and Tati Tati. So we have a long connection with Wurundjeri, Tati Tati, so this is - this is our very special dance.

10 **KATHLEEN TERRICK:** My name is Kathleen Terrick. As my Uncle said, we are Tati Tati women and we also, we are Wurundjeri women. So my family and also my family that's travelled from the big city. Sue-Anne my cousin, I acknowledge you and my Country. I'm getting a bit emotional, but this is my -these are my nieces, my beautiful nieces, my sister's daughters. So we have Aroha, Germaine and Paris. Yeah. This is really special to us, especially to do with water. You know, water, as we know, is the source of all life. And as a mother and as a woman you know, I birthed my children. They are birthed from water. And without it, you know, we
15 perish. And our people knew that. And they've sustained that for a very long time and while other countries were building skyscrapers, you know, we were worrying about river flow and sustainability and, and life on Country, not just ourselves, but the animals, you know the fish, all our birds, the plants, the medicines. You know, we had all these natural resources and we took care of them and in turn, they took
20 care of us and now that's what we're here doing today. We're standing up for what our - our life source. The very thing that has sustained us on this land. It's why we are still here today. And so I just want to you know, acknowledge that dance was just our welcome dance. And our next dance that we're going to do is called Pukeuri, which is flood.

25 **CHAIR:** Welcome, everybody. I'd just like to declare that this is a resumption of the hearings of the Yoorrook Justice Commission and as part of our official work we are delighted to be on Tati Tati Country and, Brendan, we thank you and your family and Joyce for their welcome today and Steve, Rick and Ian Kirby, a special thank
30 you. It's wonderful to hear the words from Joyce about the cycle of life and reminding us of the importance of water. And we know that as Aboriginal people and we're here because of that today.

35 So I really would also like to acknowledge the Minister who is going to be speaking with us today and thank also the dancers Ngalu, Millu, who performed for us and showed how the connections are so important as we were discussing earlier. We were talking genealogy straight away and of course with the dancers and connections, Sue-Anne, with the Terricks, it's great to see how this happens across our communities. So thank you for that opportunity. It's very important for me at the
40 moment so it's very special. So I would ask we continue with our business, Counsel, if we could have appearances.

45 **MR McAVOY SC:** May it please the Commission, I appear together with co-senior Counsel Assisting the Commission, Fiona McLeod, SC, and junior Counsel, Sarala Fitzgerald and Tim Goodwin.

On behalf of Counsel Assisting, we acknowledge the Tati Tati people but we also acknowledge the Wadi Wadi, the Mutti Mutti, Latji Latji, Ngari Ngari and all the people of the river. We thank all of the members of their community who have come out to welcome us and make us feel so welcome here today. Thank you.

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MS COGHLAN KC: Thank you, Chair. I appear with Ms Cafarella for Minister Shing today. We thank you for the beautiful welcome that has been received today. We'd like to acknowledge the Traditional Owners of the lands that we're on and the Tati Tati people in particular. We acknowledge Elders past, present and all First Peoples here today and anyone who might be listening in also. We would like to formally acknowledge in this setting that sovereignty was never ceded.

10

CHAIR: Thank you.

MR McAVOY SC: Thank you, Chair. Of course, the witness, first witness today is Mr Brendan Kennedy, a Tati Tati man, who is in the witness box. We will follow his evidence with an opportunity for the Minister for Water, the Honourable Harriet Shing, to make some comment with then formal evidence in Robinvale in the Community Arts Centre.

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I notice that the wind has sprung whilst I'm talking about the Minister. I'm not sure what that's about but we propose to commence with the evidence of Mr Kennedy.

CHAIR: Thank you.

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MR McAVOY SC: Brendan, could you tell the Commissioners your full name, please?

UNCLE BRENDAN KENNEDY: Brendan Michael Kennedy.

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MR McAVOY SC: And you are a Tati Tati man?

UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: And you have provided the Commission with two statements. Commissioners, those statements appear at tabs 1 and 2 of the material for Mr Kennedy. You have had the opportunity to read those statements?

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UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: And they're true and correct to the best of your knowledge?

UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: Is it okay if I call you Brendan?

45

UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: Would you like to make some opening statement before we go into your evidence, Brendan?

5 **UNCLE BRENDAN KENNEDY:** Yes. (Speaks in Tati Tati language). I just said it's good to see you all here today, here on (unclear) Tati Tati Country. (Speaks in Tati Tati language). Pandyl, the Murray cod created our river, Millu, back in Talikara, back in the Creation Times and that's why we - what we live by, Tati Tati people. We have never ceded our sovereignty, Tati Tati people, and all the Murray
10 River Peoples and all Traditional Owners, First Nations peoples, we have never ceded our sovereignty. We have never given consent to any - anyone other than Tati Tati to our Country. We have never authorised and we have never relinquished or bequeathed any of our Country, our water, our culture and our rights and we never will. We have been - wrong has been done to us and continues to be done to not only
15 Tati Tati people but all First Nations people.

MR McAVOY SC: Thank you, Brendan. So you identify as a Tati Tati man. What does that mean when you say you're a Tati Tati man?

20 **UNCLE BRENDAN KENNEDY:** Tati Tati means "no, no". We said no. It is our language. It is our identity. We are Tati Tati people, we are also Latji Latji people, Weki Weki people and Wadi Wadi people. We're also Mutti Mutti, Yitha Yitha, Nari Nari peoples. This is our name of our ancestors. It is - this is the name of our people. This is the name of our language and it is the name of our Country.
25

MR McAVOY SC: Thank you. I'm just going to ask you some questions so you can tell the Commissioners about your family and then I want to ask you some questions about this place. Your mother's name?

30 **UNCLE BRENDAN KENNEDY:** Her name was Caroline Farrant. And her married name is Claire Kennedy.

MR McAVOY SC: And she's a - was she a Tati Tati woman?

35 **UNCLE BRENDAN KENNEDY:** Yes.

MR McAVOY SC: Did she get her - who did she get her Tati Tati identity from?

40 **UNCLE BRENDAN KENNEDY:** From her mother.

MR McAVOY SC: And do you know her mother's name?

UNCLE BRENDAN KENNEDY: Her name was - original name was Maggie Randall. Her married name is Maggie Farrant.
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MR McAVOY SC: And do you know who your great grandmother is or was?

UNCLE BRENDAN KENNEDY: Great grandmother is Maggie Ivanhoe and her grandmother is Sarah Randall. My grandmother's grandmother is Sarah Randall.

5 **MR McAVOY SC:** And are they all Tati Tati People?

UNCLE BRENDAN KENNEDY: Sarah Randall is Tati Tati. Maggie Ivanhoe was Mutti Mutti.

10 **MR McAVOY SC:** And from your mother you've learned about this Country?

UNCLE BRENDAN KENNEDY: From all our people. Not just my mother but from all of our Elders.

15 **MR McAVOY SC:** And so was that something that you grew up with?

UNCLE BRENDAN KENNEDY: Yes.

20 **MR McAVOY SC:** And during the course of your life have you spent much time on - in this area, on Tati Tati Country?

UNCLE BRENDAN KENNEDY: I am 56 now. I've spent more than 50 years - I've only spent five, six years off Tati Tati Country. So nearly all of my life.

25 **MR McAVOY SC:** Yes. So the vast majority of your life has been spent here?

UNCLE BRENDAN KENNEDY: Yep.

MR McAVOY SC: Is there a reason for that?

30 **UNCLE BRENDAN KENNEDY:** Opportunities, travel, to be with family in Naarm, Melbourne, inter-marriage, work, education, sport, survival.

MR McAVOY SC: You know, in your statement you have referred to the notorious Caroline Farrant. Can you just explain who she is.

35 **UNCLE BRENDAN KENNEDY:** Caroline Farrant, originally Caroline Williams. Farrant is her married name. She married a European. She was also known as The Notorious Queen Caroline. Her tribal husband is Euston Billy, King Billy of Euston. Also known as King Dick of Euston. He was also known as Billy House. So Caroline
40 Farrant, Queen Caroline, she was also - she was a Yitha Yitha.

MR McAVOY SC: And she was given the name 'notorious'. Why was that?

45 **UNCLE BRENDAN KENNEDY:** She was wild. She was tribal. She was fiery. When she come into town she would paint the town red. So she was - she was unbridled or un - they couldn't control her. She was a tribal woman. Very - very strong and very prominent and very notorious and very famous.

MR McAVOY SC: And it's a matter of some pride for Tati Tati people that she -

5 **UNCLE BRENDAN KENNEDY:** We have incredible pride for my ancestors. They were prominent people. They were kings and queens. They were royal. We have royal blood.

MR McAVOY SC: Yes.

10 **UNCLE BRENDAN KENNEDY:** And my sister sitting here tell me the story about when she was a little girl and asked - and our mother told her that her grandmother was a queen, and my sister said, "Well, what does that make you, Mum? And mum said, "Well, I'm a princess". So these are - these aren't tokenistic labels Europeans put on us. When you come from descendants of kings and queens,
15 this is very powerful.

MR McAVOY SC: Yes.

20 **UNCLE BRENDAN KENNEDY:** Caroline was a queen.

MR McAVOY SC: You also have been told some stories about Euston Billy.

25 **UNCLE BRENDAN KENNEDY:** Yes. Always told stories how, you know, say well Mum's grandfather was in the cricket team, his name was Billy and he was a king. And -

MR McAVOY SC: And which cricket team was that?

30 **UNCLE BRENDAN KENNEDY:** He was in one of the early teams. There were several cricket teams. One is very famous, the Johnny Mullagh team, but there was a couple of other teams that went before them and after them.

MR McAVOY SC: Where did they go to?

35 **UNCLE BRENDAN KENNEDY:** They went to England.

MR McAVOY SC: Yes.

40 **UNCLE BRENDAN KENNEDY:** Because Billy, Caroline were here. Billy he was a little boy when Edmund Morey come here at Euston, 1846. And then Billy was eight years of age. So Morey called him Billy and he ended up becoming King Billy.

MR McAVOY SC: Yes.

45 **UNCLE BRENDAN KENNEDY:** So, yeah, Morey, Edmund Morey wrote a lot about Billy.

MR McAVOY SC: And are they also stories that are kept alive in your family and passed down?

5 **UNCLE BRENDAN KENNEDY:** Yeah, yep. There is photos of them standing in the canoes, and oral history, and -

MR McAVOY SC: And Tom Farrant, do you know - do you have somebody -

10 **UNCLE BRENDAN KENNEDY:** We have - we have a couple of Tom Farrants. Grandfather Tom Farrant, he is the son of Queen Caroline. And grandfather Tom Farrant, he married my - our grandmother Maggie Randall.

15 **MR McAVOY SC:** Yes. And also a - a person by the name of George Ivanhoe. Can you just explain for the Commissioners who George Ivanhoe is.

20 **UNCLE BRENDAN KENNEDY:** George Ivanhoe is our grandmother Maggie Farrant - Maggie Randall's uncle. George Ivanhoe is the son of King Tommy Ivanhoe and Victoria Wepraper. Victoria Wepraper was a Wadi Wadi. King Tommy Ivanhoe was Mutti Mutti. But George Ivanhoe is recorded as being one of the last clever men. So he become quite famous and well-known, George Ivanhoe. And a cousin here, his name is George, he is named after who we referred to as Uncle George Ivanhoe.

25 **MR McAVOY SC:** And so for those who don't know, when you refer to a "clever man", what are you referring to?

UNCLE BRENDAN KENNEDY: Well, I can't tell you everything.

30 **MR McAVOY SC:** No.

UNCLE BRENDAN KENNEDY: But that's -

MR McAVOY SC: That you can say publicly.

35 **UNCLE BRENDAN KENNEDY:** Europeans say medicine man or witch doctor, but for us it has - they could do many things. They -

MR McAVOY SC: And yeah, we have said -

40 **UNCLE BRENDAN KENNEDY:** They were very clever. In many, many ways.

MR McAVOY SC: Yes. In paragraph 17 your statement you have referred to many people having died for various reasons. There's various reasons on their death certificates. But the death certificates don't always match up with the oral histories.

45 **UNCLE BRENDAN KENNEDY:** No. The oral history is that George Ivanhoe had up to 20 siblings.

MR McAVOY SC: Yes.

5 **UNCLE BRENDAN KENNEDY:** And we have all these death certificates of all of George Ivanhoe's siblings. All died. All different ages. Young ages, children, teenagers, 19, 20 - 20s, and all buried at the island at Balranald. George was the only one that survived. But, yeah, the death certificates, they say different for different reasons, different medical reasons. European medical reasons. But in our oral history something bad happened over there.

10

MR McAVOY SC: So do you think that they were killed?

15 **UNCLE BRENDAN KENNEDY:** Yeah, they were killed. Even, you know, the story of my last aunty, my cousin's mum talking about their - Granny Farrant, Maggie Farrant, when she was a little girl and her grandmother, they were being chased on horseback by the - by the police through the floodwaters and how they had to hide under a log of a fallen tree in the flood waters and - and Granny Farrant's grandmother died there and she was laying there with her, Granny Farrant. The little girl was laying there with her grandmother.

20

MR McAVOY SC: Yes.

UNCLE BRENDAN KENNEDY: For several days. So there was a reason why they were being pursued.

25

MR McAVOY SC: Mmm.

UNCLE BRENDAN KENNEDY: They were the only survivors left.

30 **MR McAVOY SC:** Yep.

UNCLE BRENDAN KENNEDY: Along with George Ivanhoe and Queen Caroline at that time.

35 **MR McAVOY SC:** You are also make the observation in your statement about your mother reacting to sounds of thunderstorms or starting pistols.

40 **UNCLE BRENDAN KENNEDY:** Yeah. She told us the story about my grandfather Farrant used to be a foot runner, race - he would win races. And when they would fire the guns she would start screaming and crying and saying that they are trying to kill my father. And even when we would have big storms, thunderstorms and that, she would be hiding in the bed and under the bed. Every time the thunder would be loud she would scream, you know.

45 **MR McAVOY SC:** You are holding your arms up. You can remember seeing that with your mother?

UNCLE BRENDAN KENNEDY: Yeah. Yeah, absolutely, yes. And that would have been also too, they lived in the bush. You know, they -

5 **MR McAVOY SC:** Now, you talk at paragraph 22 about your family living around this area and having the house or living at a camp near the tip. Can you just tell the Commissioners about that? We will be going into Robinvale shortly.

10 **UNCLE BRENDAN KENNEDY:** Yeah. So the families always lived in the bush, and my older sister here and older brothers, they grew up in the bush. They were born, they spent the first up to 10 years living in the bush and then all of a sudden, 1963, then they were put into a house in the town and that - at that stage our mother never ever lived in a house before. She had only ever lived in - in the bush. And when dad would go away for work, she would pack the kids up and go back down the camp.

15 **MR McAVOY SC:** Yes.

20 **UNCLE BRENDAN KENNEDY:** Live the bush life. So that was more - it was a real shock for the older kids, you know, getting put inside a house when they were all - and this is where they lived. They only ever lived like this, out in the open in Country. So -

MR McAVOY SC: Yes.

25 **UNCLE BRENDAN KENNEDY:** I was born in the town, in the house. So - and I'm okay.

30 **MR McAVOY SC:** Do you have memories of a child - of coming to places like this around the area?

35 **UNCLE BRENDAN KENNEDY:** We would go walking through the bush, my younger brother and I. He has passed away now. We would go walking through the bush and then we would stop and then we would feel something. And we would come home and say, "Oh, we could feel something down there". And they would say, "Yeah well that's where we used to live". Oh. It was before our time, I wasn't born. But because of the way this Country is, we have bush and Country all the way around us. The town - and the bush is everywhere around. So it's only, like, you could walk five, 10 minutes and you are almost in the bush.

40 **MR McAVOY SC:** And you know a lot about the plants and animals around this area?

45 **UNCLE BRENDAN KENNEDY:** Yeah, we have to. Yeah. You have to. It's just like city people, they know where all the roads and streets and all the main shopping centres are and all that. It's the same with us. We know where all the good places are. Places where we are not meant to go. We get told not to go to these certain places and where we can go.

MR McAVOY SC: And in terms of food or bush tucker.

5 **UNCLE BRENDAN KENNEDY:** Yeah, well there is always - like I still have
visions of my oldest brother, brother Johnny, coming down the road with his fish,
you know. And we have to - Joyce, our mother sitting on the log, trying to catch this
big cod. And she finally caught the cod and it was a big, big event, you know. So,
you know, this has such rich memories and the history, and all the families have it.
10 All the families and mobs that have come here later on, still here. You know, like
Europeans refer to the books and the pages and, you know, everything written in
English. Us, our stories, it's all there. It's all in our minds and in our - it's in our
DNA.

15 **MR McAVOY SC:** Yes. I mean, is there a sense that the Country provides for you
and your people?

UNCLE BRENDAN KENNEDY: Well, it should. It did but now it can't. So this is
the conundrum we are in at the moment. We expect our Country to provide for us
and for us to, you know, maintain Country, provide for Country. We want to provide
20 for the platypus, the Marti to be here but we can't. Marti the platypus can't be here.
Pandyil, the cod, it's our responsibility to ensure that there is a home for Pandyil the
cod. Pandyil the cod can't live there.

25 **MR McAVOY SC:** We will come to that in a second. I just want to take you to one
other matter from - from your family history or your own history. At paragraphs 31
and 32 you talk about your Catholic school education. You don't need to look at the
statement. You were educated at a Catholic school?

30 **UNCLE BRENDAN KENNEDY:** Yes, St Mary's.

MR McAVOY SC: And your memory of that school is that the school had a
protective role, tried to protect the Tati Tati kids?

35 **UNCLE BRENDAN KENNEDY:** Yeah, the school protected us. Catholic school
protected us. The nuns and the priests and our teachers would - they become our
godparents.

MR McAVOY SC: Yes. And so who were they protecting you from?

40 **UNCLE BRENDAN KENNEDY:** From the welfare, the government.

MR McAVOY SC: Yeah. And they - there also obviously, because it was a school,
gave you an education?

45 **UNCLE BRENDAN KENNEDY:** Yeah, very religious, obviously.

MR McAVOY SC: And what age did you finish school?

UNCLE BRENDAN KENNEDY: I - I left there when I was 13 and then went to the, what we call a public school, high school. I only lasted one year there, that was a huge shock to my system.

5

MR McAVOY SC: I just want to ask you something now about your own family. How many children do you have?

UNCLE BRENDAN KENNEDY: How many do I have? I have six. One grandson.

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MR McAVOY SC: At paragraph 33 of your statement you say:

"They work for themselves and their Country is their boss. I'm happy that they don't work for a supermarket or a factory."

15

What do you mean whether you say the Country is their boss?

UNCLE BRENDAN KENNEDY: Yeah, Country - Country is their workplace, Country is their boss. They work for their Country. They are not the boss, you know, they are not the manager or the CEO or whatever. The Country is the boss. They work for the Country. They are - they are responsible to Country and accountable to Country in that sense. Not so much in - in a workplace mindset. They are accountable to Country. And Country will provide for them and all - all of our mob.

20

MR McAVOY SC: And so do you say that they know if they are not doing the right thing by Country or they are told?

25

UNCLE BRENDAN KENNEDY: Yeah.

MR McAVOY SC: Yeah.

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UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: Now, I - speaking about Country, I want to ask you about this place now. This place is called Margooya Lagoon.

35

UNCLE BRENDAN KENNEDY: Yes, Margooya Lagoon or Tol Tol, Tol Tol Lil.

MR McAVOY SC: And just in terms of introducing this place for the Commissioners, what can you say about this place generally?

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UNCLE BRENDAN KENNEDY: Well, this is a lagoon here, it's the ancient - the cliffs around - cliffs around the ancient Murray River flow of 30,000 years ago. It's a - it's a - it's a Y-shape, backwards opposite Y-shape lagoon, horseshoe lagoon as the Europeans like to refer to it as. Creation site. So it's an ancestral site. We have many ancestral sites here. We have grandmother trees right here, we have ancestral

45

burials around. We have our ring trees are here, Mirnu biyali is our ring trees. And it's also where our ancestors are recorded by the Europeans in the 1800s.

5 **MR McAVOY SC:** So you have referred to the grandmother trees here. What trees are you referring to?

UNCLE BRENDAN KENNEDY: On my right here is - the grandmother trees are there.

10 **MR McAVOY SC:** And what - and just for the transcript, what type of trees are they?

15 **UNCLE BRENDAN KENNEDY:** Well, they are red gum trees. They are very old trees as you can see. They also have rings in them. They are ring trees as well as grandmother trees. And there is some hollow in there, there would have been some birthing happening as well for our people.

20 **MR McAVOY SC:** And do those red gum trees require particular conditions to grow?

25 **UNCLE BRENDAN KENNEDY:** Yeah, well they obviously need water and they need healthy Country around. They - them grandmother trees need all - they have their daughter trees here, which are referred to as mother trees, and they have grand-daughter trees. So the grandmother trees need all the trees to be well.

MR McAVOY SC: Yes.

UNCLE BRENDAN KENNEDY: For grandmother to be well.

30 **MR McAVOY SC:** Yes. And the lagoon, you have talked about this lagoon in terms of it not being well enough to - for cod. Can you just explain why that is?

35 **UNCLE BRENDAN KENNEDY:** It doesn't get cultural flow - it doesn't get the water, the way the water is being delivered into the lagoon is not such a way that can create a healthy wetland for cod. Not only cod can't get in here, but also the actual state of the lagoon is not - it's not a healthy place for cod to be.

MR McAVOY SC: And is that the same for other aquatic species?

40 **UNCLE BRENDAN KENNEDY:** Yes. Yeah. Well, all. All aquatic - the lagoon is not healthy for all life here.

MR McAVOY SC: But the lagoon in Tati Tati terms is a special place?

45 **UNCLE BRENDAN KENNEDY:** It is. Yes. Yes.

MR McAVOY SC: And if the lagoon is not healthy what does that mean for Tati Tati people?

5 **UNCLE BRENDAN KENNEDY:** Well, it means we are not healthy. We - we can't survive. Our life expectancy - all elements of our existence is severely compromised.

MR McAVOY SC: I just want to ask you something now about the - the spirits of this place. When you are here, do you feel as though you are in the company of spirits?

10 **UNCLE BRENDAN KENNEDY:** I am in the company of the spirit world. Ancestral spirits and the trees have ancestor spirits as well. And all the birds and of course mother earth. The land underneath us. So there is a very special energy here that we feel, and we have noticed some of our visitors here have felt it as well when
15 we bring them here.

MR McAVOY SC: And is that energy a positive energy or a negative energy or -

20 **UNCLE BRENDAN KENNEDY:** Well, yes, it's up for interpretation. It's a combination. It's calling out to us. Giving us signs and signals that spirit of Country is - is under duress.

MR McAVOY SC: Yes. And when we see the dancers, Nardu Millu, is that any relationship to the spiritual presence and existence?

25 **UNCLE BRENDAN KENNEDY:** Yeah, the spiritual presence informs the dancers and the - and the performance and the energy. So it's together. It's - and I think today was a really good example of how the spirit of this place really made for such a beautiful, beautiful cultural performance. The expression of our culture.

30 **MR McAVOY SC:** Do you - have you talked about this spiritual energy to non-Aboriginal people before?

35 **UNCLE BRENDAN KENNEDY:** In - putting it in English is - has its difficulties. But we do try. We have. Usually the Europeans will come out here, they can only see so much. Their ways of being and where they come from and who and how they are is quite limiting to them but not for us. Traditional Owners and any First Nations people that have come to our Country can understand without us even having to overemphasise, you know, the significance of spirituality on Country.

40 **MR McAVOY SC:** Have you had visitors from other countries here and talked to them about that.

45 **UNCLE BRENDAN KENNEDY:** Yeah we had the Māori, iwi from Māori New Zealand, Aotearoa. And we have had the Navajo First Nations from the Colorado River here earlier in the year.

MR McAVOY SC: And other First Nations from around Australia?

UNCLE BRENDAN KENNEDY: Yeah, of course all of our Traditional Owners from around Australia and Victoria and interstate.

5

MR McAVOY SC: And they - do they have difficulty understanding the -

UNCLE BRENDAN KENNEDY: No. They don't -

10 **MR McAVOY SC:** - the spiritual aspects of this place?

UNCLE BRENDAN KENNEDY: No, we - we had Traditional Owners from the ACT here a few weeks ago, we have Ngunnawal and Walgalu and the Walgalu Elder immediately - they immediately understood this place and they had their interpretation and they shared that with us. And they were exactly right when they spoke about the spirituality of here. That verified our own spirituality, knowledge of Country.

15 **MR McAVOY SC:** Yes. Yes. And do Tati Tati people have their own lore that's different to the European, Australian law?

UNCLE BRENDAN KENNEDY: Yeah, completely. Totally different. Our traditional lore and culture and custom it come from this Country. It comes from here. And it's similar to other - our neighbours, Wadi Wadi and Muthi Muthi and Latji Latji. But it has no similarities to foreign, overseas, apart from our First Nations peoples from other countries.

25 **MR McAVOY SC:** And under Tati Tati law, is there a responsibility for these places?

30

UNCLE BRENDAN KENNEDY: Yeah, it is. When we are talking in English now, so the word responsibility is not enough.

MR McAVOY SC: Yes.

35

UNCLE BRENDAN KENNEDY: You know, we -

MR McAVOY SC: What word do you use?

40 **UNCLE BRENDAN KENNEDY:** Like - we feel pain for Country. So when Country is in pain we feel that pain. So when Country is - when the Europeans are cutting down the trees and digging up our mother earth and - and killing our kangaroos and killing our water here. Killing our water, like we see the killing our water right before our eyes. Like, so it's, you know, they were saying dying a death of a thousand cuts. We are dying the death of a million cuts. It is just continually cutting into our souls and our spirit and our wellbeing. So that's what the Europeans - I mean, they come - the name State Government or Commonwealth

45

Government or - that's - we just refer to them as Europeans. Call it colonial people.
But.

5 **MR McAVOY SC:** Do you find that there's any respect for Tati Tati lore and custom?

UNCLE BRENDAN KENNEDY: Well, we hear acknowledgment but, you know, I can acknowledge, you know, this microphone.

10 **MR McAVOY SC:** Yes.

UNCLE BRENDAN KENNEDY: It doesn't mean anything. So we hear that all the time; "I acknowledge". But we don't - we don't hear recognition. Recognition and respect and - and we - we follow your laws. No, we just hear, "we acknowledge".
15 That's all we hear. So that's just reinforcing the pain and suffering that they are inflicting on us and our Country.

MR McAVOY SC: And so -

20 **UNCLE BRENDAN KENNEDY:** It's quite damaging words.

MR McAVOY SC: And at paragraph 112 of your statement, your first statement, you say that the Elders talk about the river as our mother. And that's - is that something that - that you understand too after having learned that from your Elders?
25

UNCLE BRENDAN KENNEDY: Yeah, Country - yeah, our Country is our mother.

MR McAVOY SC: And the Millu, the river.
30

UNCLE BRENDAN KENNEDY: The Millu, yeah. Mill-u, u meaning I'm telling you about the third person. Third person suffix because I'm a linguist. Millu. When we have u on the end we are telling you - Millu is the living being, the person who created. Like Pandyl.
35

MR McAVOY SC: And so when things are done to the Millu, that has a real personal affect.

UNCLE BRENDAN KENNEDY: Yeah.
40

MR McAVOY SC: Is that right?

UNCLE BRENDAN KENNEDY: Yeah. Yeah, exactly. And that harm is being felt by these little babies, these little bubups. Not only to us. But to our little babies here and our future babies. Like Europeans have to realise the enormity of what they are doing, instead of hiding behind the books and the money. And the legislations. They are - you are killing our people, killing our baby - our future babies. The one and
45

only opportunity to exist in - you are talking billions, billions of years and they only have one chance to exist and that that one little opportunity to exist. Yeah, that - that gets damaged and harmed and, you know. Got to think bigger. That's the truth.

5 **MR McAVOY SC:** It's correct to say that Tati Tati people's future depends on Tati Tati living on Country, on their own Country.

UNCLE BRENDAN KENNEDY: Absolutely. We nearly got slipped off to Coranderk in 1886. We - but yeah, our existence - our - we can't exist anywhere
10 else. As Tati Tati we can only exist here on this Country and it's getting taken off us every second of every day. The State, the invasion continues. As Lidia says, another day in the colony, continues every moment of every second of every day, continuing. We're being dispossessed as we sit here.

15 **MR McAVOY SC:** So when you say Lidia, you're referring to Senator Lidia Thorpe?

UNCLE BRENDAN KENNEDY: Lidia Thorpe, yeah. So when I hear this word
20 "we acknowledge you", "we acknowledge you but we're going to take it off you. We're going to take it off you and we have no intention of stopping taking it off you for the next 100 years."

MR McAVOY SC: At paragraph 115 of your statement, you say:

25 "Our water is like the blood in our bodies."

And so if the water is unhealthy does - that has effect on the Tati Tati people?

UNCLE BRENDAN KENNEDY: Yeah, of course. So we have - all of our Country
30 is in this region and we have ancestral beings in the landscape, in the shape of our ancestral beings and each areas are part of the living body and these places here are the organs and the rivers are the veins and the creeks - the rivers are the arteries and the creeks are the veins and the lagoons and wetlands are all the organs. So by
35 denying its blood, its life blood, water, to those places, is killing Country and then that kills us. And, you know, like as human beings if you stop - if you decided to stop blood from going to this arm, well, you're not going to have that arm eventually.

MR McAVOY SC: At paragraph 116 you say:

40 "We have been born into this. We and our Country are under constant strain and duress from the colonial project."

UNCLE BRENDAN KENNEDY: Yeah, I was talking to my cousin the other night
45 there about, you know, one of our girls giving birth in prison, to one of our little bubups, you know, laughing about it. This is the same with us and as brother Robbie Thorpe says he - how does he put it, where we're incarcerated, aren't we, we're in

prison, we're in - we're survivors of the Holocaust and it's a crime scene and here we are, we are prisoners. We're being held captive, imprisoned in our own Country. So we're born into this. we're born into this maximum security prison you have called Australia.

5

MR McAVOY SC: You laughed a little bit a moment ago when talking about the baby being born in prison but that's to deal with the pain of it. It's not because it's funny.

10 **UNCLE BRENDAN KENNEDY:** No. Yeah, so, you know, our babies here, who has control of their future? Not us, you know. So we don't have self-determination for our babies. The only way that they - that the State is going to allow them to survive is if they live like the Europeans. But you can't live like Tati Tati and you can't have Tati Tati Country and water, no. That's the project, got to continue. This
15 is the business and your old ways are gone.

MR McAVOY SC: So with the colonial project, is the -

UNCLE BRENDAN KENNEDY: The colonial project.

20

MR McAVOY SC: - the dispossession and the occupation of your Country?

UNCLE BRENDAN KENNEDY: Yeah, and we are - we got - it's the colonial wastelands we have. The colonial wastelands is what our babies and us have to -
25 we're born into and what we have to try and survive.

MR McAVOY SC: So I just want to ask you something about - a little bit about the colonial project. You talk about things still happening as part of the project, it's still continuing on. You're still feeling it today and indeed it's your observation that
30 there's no intention of stopping it.

UNCLE BRENDAN KENNEDY: Oh, no, it's bang, the foot is down, full throttle, full speed ahead. I've seen - it's getting faster. It's picking up speed. It's picking up speed. Yeah, there's no intent, is there. It's just take, take, take and less -
35

MR McAVOY SC: Yes.

UNCLE BRENDAN KENNEDY: Don't worry about the original people, don't worry about them.

40

MR McAVOY SC: So I just want to ask you something about

UNCLE BRENDAN KENNEDY: The original owners I should say.

45 **MR McAVOY SC:** Yes.

UNCLE BRENDAN KENNEDY: Original owners.

5 **MR McAVOY SC:** I just want to you something about what the - the earlier part of the colonial project. So when it came here a lot of terrible things were done to your people and your Country. Under - in Tati Tati way, is the present day government still responsible to pay back the Tati Tati for all those things that happened in the past?

UNCLE BRENDAN KENNEDY: Yes. Absolutely.

10 **MR McAVOY SC:** It's not like there's a cutoff period where you say, "Anything that happened before that we're not responsible for that"?

UNCLE BRENDAN KENNEDY: No, no. There's no cutoff.

15 **MR McAVOY SC:** Not under your lore?

UNCLE BRENDAN KENNEDY: There no going back and saying, "Oh, before 1974 or before 1901", no. No.

20 **MR McAVOY SC:** The other part of that observation that you made about being born into this, into this colonial project and having to figure out how to survive, is it - I understood it to say that, you know, this isn't of our doing. This has been forced upon us. Is that what you intended to say?

25 **UNCLE BRENDAN KENNEDY:** Yeah, absolutely. It's imposed upon us. It's without our free, prior and informed consent. Our Country is under occupation. There has been no Treaty. There has been no sit down agreement with Tati Tati for our Country and for our water.

30 **MR McAVOY SC:** So under your lore, if people from a different part, other Traditional Owners wanted to come here and do things on your Country, how would they go about that?

35 **UNCLE BRENDAN KENNEDY:** Well, I wouldn't know because I've never practised that, that style of -

MR McAVOY SC: Yes, but would you expect them to ask, ask for permission and get your agreement to doing things?

40 **UNCLE BRENDAN KENNEDY:** Would I expect other Traditional Owners to come and see us to help the colonisers dispossess us? No. I wouldn't think so.

MR McAVOY SC: Maybe I put the question in the wrong way. That was -

45 **UNCLE BRENDAN KENNEDY:** That's all right. I can help you. Like when I go to Wurundjeri or when I've got to go and see Wurundjeri, Gunditjmarra. When you go to someone else's Country you leave it the same way when you went there. You

don't interfere with them Traditional Owners there and you don't side up with the government. You don't play jacky-jacky.

5 **MR McAVOY SC:** And so is it - do you - I mean, from your evidence so far today I think it's pretty clear that you say that the government doesn't observe that lore and custom. It doesn't

10 **UNCLE BRENDAN KENNEDY:** No. No, well, when you're going to dispossess someone you don't play by any rules, you know, there's no agreed agreement of the rules of the dispossessor and the dispossessed, just come in and dispossess and use all the dirty tricks and tactics and anyone that's going to say yes. You see, you've got yes/yes. We're the no/no mob here. So we get some people who might say yes but they're not us.

15 **MR McAVOY SC:** I just want to take you to another part of your statement now. At paragraph 120 you talk about the Murray River operator. Can you just explain for the Commissioners what the "Murray River operator" is?

20 **UNCLE BRENDAN KENNEDY:** Yeah, the river does have a Murray River operator base somewhere upstream and it's actually one person and a team and they operate the regulation of the river and they determine the flow rates, they determine the releases of water from storages, and they work obviously close to the - with the State Government on doing that.

25 **MR McAVOY SC:** And do they work with both the Victorian and the New South Wales government or only -

30 **UNCLE BRENDAN KENNEDY:** I would think so. I think they would work both States.

MR McAVOY SC: And your observation about the Murray River operator is that in your statement that they treat the river as an irrigation channel, not as a being with a spirit.

35 **UNCLE BRENDAN KENNEDY:** Yeah, they treat it as - it's being treated as a non-lifeform, as an irrigation channel. It's quite cold actually, it's very brutal to treat a river as just a channel that's just delivering water from one place to another for the purpose of, you know, irrigation or river regulation management.

40 **MR McAVOY SC:** At paragraph 128 of your statement, Brendan, you say that you want to call out the State of Victoria - you might have a look at this paragraph yourself under tab 1.

45 **UNCLE BRENDAN KENNEDY:** Which page?

MR McAVOY SC: It's page 13.

UNCLE BRENDAN KENNEDY: I need to turn the pages, the wind is blowing it.

MR McAVOY SC: We might be able to do it without - can you see that? Page 13?

5 **UNCLE BRENDAN KENNEDY:** Yep.

MR McAVOY SC: Paragraph 128 perhaps you can read out that paragraph for the Commissioners.

10 **UNCLE BRENDAN KENNEDY:** Yeah.

15 “We want to call out the State of Victoria to stop killing our cultural economy, our natural resources, our land and our water and our Country and our culture, our minerals. We want our economy back. You have no right to our land. You have no right to deprive our children of their inherent cultural economy. You have no right to deprive us of our dignity. Where we bury our old people is the strongest form of land ownership in human existence.”

20 **MR McAVOY SC:** And there are Tati Tati people buried around Tati Tati Country obviously?

UNCLE BRENDAN KENNEDY: Yeah, everywhere.

25 **MR McAVOY SC:** And we are going - after this evidence we are going into Robinvale to the Community Arts Centre for further evidence. Can you say something about burials in that area?

30 **UNCLE BRENDAN KENNEDY:** Yeah, there’s many burials around that centre through the caravan park, through what they call Centenary Park, that area. There’s ancestors there who were massacred within a couple of hundred metres of that building.

MR McAVOY SC: And how do you know that they were massacred?

35 **UNCLE BRENDAN KENNEDY:** This is oral history told from my father and his work colleagues when they were working there in the 1970s. They were digging and they found three ancestors buried there. Two adults and a baby. One adult had barbed wire around the neck and one had a bullet hole in the skull and then they had a tomahawk in the baby.

40 **MR McAVOY SC:** And there are other sites like that around Tati Tati Country?

45 **UNCLE BRENDAN KENNEDY:** Yeah. We have our cemeteries. We have obviously Mt Dispersion where Major Mitchell - and we also have the next bend here is just past Margooya it was called “invincible bend” which is only about a kilometre way. So you can get an idea of what “invincible bend” means.

MR McAVOY SC: Well, in your statement you refer to Major Thomas Mitchell and Mt Dispersion. Can you tell the Commissioners what your understanding is about Thomas Mitchell now?

5 **UNCLE BRENDAN KENNEDY:** Yeah, that's probably the most well-known massacre site here in this area is where Mitchell and his party they massacred Tati Tati and Latji Latji people there.

10 **MR McAVOY SC:** And that's well known to Tati Tati people and Latji Latji people?

15 **UNCLE BRENDAN KENNEDY:** It's well known to, yeah, all of our First Nations People, Traditional Owners in this area. And Europeans all know this as well so - and it's named - there's also a plaque, or there's a monument there for Major Mitchell. He has many monuments through this Country. So in the European world he's celebrated and elevated into a status but, yeah, he's I suppose not really talked about much in the Country areas here.

20 **MR McAVOY SC:** How do you see Major Mitchell, or the Tati Tati people see Major Mitchell?

25 **UNCLE BRENDAN KENNEDY:** Well, he was - him and his people they were killers. They were supposed to be doing something else which is surveying Country and travelling across Country but they did more than that. They represent the first wave or the first act of aggression on our people by the Europeans. No, we don't have a really great - we don't talk about him much. No. You certainly wouldn't talk at the dinner table about someone who's killed your people.

30 **MR McAVOY SC:** No. How do you feel about the name of that place as Mt Dispersion? Do you think that's -

35 **UNCLE BRENDAN KENNEDY:** Yeah, well, that's another - that's a very harmful title to hear. It's a reminder, it's a constant - you know, it's another cut, one of a million cuts into one and the Europeans here, you know, that's their - that obviously makes them stand a bit straighter. Well, you know, we did that here. You know, we've got ANZAC thing here and we've got this and we've got our monuments of conquest and you go to Melbourne and you'll see 'Nam, you'll see the museums and you'll see the bridge, you'll see everything, the monuments of conquest. All those places are - they're monuments of conquest, reminders to them
40 that we conquered, we're still conquering this land and this people.

45 **MR McAVOY SC:** So is it - I mean, you might not be able to answer this but is it - we heard evidence in this Commission from the Surveyor-General, the present-day Surveyor-General, was it possible for you to think about the Surveyor without thinking about the deeds of his predecessors?

UNCLE BRENDAN KENNEDY: Surveyor, I've seen the early maps we've got here. I got them from the Public Records Office, the early maps of this area. Guess what, there was no Europeans here in 1847, I think that map was done. We've got maps from this area from 1847, there was no Europeans here, by the way. Only our
5 people were here. And we have sites that date back - you know, sites that date back 15, 20, 30, 35,000 years and now down in Warrnambool the oldest site, 100,000-year-old sites. So, you know, as Marcia Langton calls it, the national psychosis, the great national psychosis of denial. How much more do youse need? So, no. Don't keep saying, "We acknowledge you." You can take that wherever you want to take
10 it. We don't want that.

MR McAVOY SC: And where we are here -

UNCLE BRENDAN KENNEDY: We want you to properly reconcile the truth
15 within yourselves. You know, recognise - you know, deal with it, reconcile and as Ms Ambrosio said, you know - I can't remember exactly what she said, word for word but it's just not right. It's wrong.

MR McAVOY SC: Yes.
20

UNCLE BRENDAN KENNEDY: I mean, you don't need to go to university or church to religion to know that, surely.

MR McAVOY SC: Thank you. I might ask now some questions about the
25 Margooya Lagoon Cultural Flows Management Plan.

UNCLE BRENDAN KENNEDY: All right. Now I'm feeling warmer. It's warming up.

MR McAVOY SC: The Cultural Flows Management Plan, I've just got a few
30 questions for you about that. That's tab 3.

UNCLE BRENDAN KENNEDY: Tab 3. Yep.

MR McAVOY SC: Were you involved in the preparation of this document?
35

UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: I mean, it appears to be a really well-prepared document,
40 were you happy with the product?

UNCLE BRENDAN KENNEDY: Yes. Yes.

MR McAVOY SC: On the third or sorry, page 6 of the document there is a part
45 called declaration of sovereignty. Would you be okay to read that out?

UNCLE BRENDAN KENNEDY: Yes. (Speaks in Tati Tati language). So:

5 “We, Tati Tati and Wadi Wadi, are the sovereign nations that carries the responsibilities of caring for our Country, including all the waterways, landscapes, wildlife, ancestral site, totemic species, and cultural heritage, as well as our language, lore, song, dance, ceremony, customs. Our inherent right as Traditional Owners is our connection to place, land and animals dating back to over 2000 generations.

10 We, Tati Tati and Wadi Wadi, state we have never ceded sovereignty, nor ever relinquished, given, or traded our inherent right to Country and culture to any foreign individuals, parties or governments. Tati Tati and Wadi Wadi does not consent to any foreign individuals ... our involvement in any capacity does not and could not, and should not, be misrepresented as Tati Tati and Wadi Wadi's consent for decision-making management on our behalf.

15 We are, and will forever be, the rightful people to care for our Country."

20 **MR McAVOY SC:** Thank you. I would just like to ask you to turn to - I think it's page 12 where the objectives are set out of the plan. I can indicate, Commissioner, we've got about five to 10 minutes left with the - with the primary evidence of this witness. And - so Brendan, the - under the heading Objectives there's a reference to "flows and connectivity". Can you see that on page 12.

25 **UNCLE BRENDAN KENNEDY:** Yes.

MR McAVOY SC: The first objective is:

30 "To restore connectivity between Margooya Lagoon, the natural inlets upstream and east of the lagoon, and the Murray River by 2025.

That's next year. So this plan was written in 2021.

UNCLE BRENDAN KENNEDY: Yes. Four years old.

35 **MR McAVOY SC:** Are you on target to achieve that objective?

UNCLE BRENDAN KENNEDY: No.

40 **MR McAVOY SC:** No. Can you explain why not?

45 **UNCLE BRENDAN KENNEDY:** Because the State and its agencies are, continue - continue to maintain control and manage water to Margooya Lagoon and they have not supported us on our journey towards cultural flows - actual cultural flows. Not just the government development of reports but water - there hasn't been any water hand back return to us.

MR McAVOY SC: Do the Tati Tati people now own any water under the western water system?

5 **UNCLE BRENDAN KENNEDY:** No, under the Western water system we own 0.00 per cent.

MR McAVOY SC: At tab 5 you will see there's a letter to you and Melissa Kennedy dated 18 April 2024 from the Mallee Catchment Authority. Do you know about that letter?

10

UNCLE BRENDAN KENNEDY: Yes, the Mallee CMA.

MR McAVOY SC: Yes. And so that letter says:

15 "Please note that in light of current river conditions and forecast weather the Mallee CMA is preparing to close the regulator in late April 2024."

That's now:

20 "This will allow Margooya Lagoon to undertake a natural drawdown phase following consecutive years of inundation."

So, for the people who aren't, you know, frequent users of the water lingo, can you explain what that means?

25

UNCLE BRENDAN KENNEDY: So that means it's saying that they are going to shut the regulator and that they are going to dry out the lagoon. And they are saying that the regulator is going to be closed in late April, which is now in the next few days. And then basically the lagoon will dry up.

30

MR McAVOY SC: And were you or any other Tati Tati people consulted about that decision?

35 **UNCLE BRENDAN KENNEDY:** No. We are - got a letter here that says they are going to do it.

MR McAVOY SC: That's the extent it -

40 **UNCLE BRENDAN KENNEDY:** Yeah, that's it.

MR McAVOY SC: And is that consistent with the way in which Tati Tati people are dealt with by government or is it a particularly bad example?

45 **UNCLE BRENDAN KENNEDY:** No, that's - that's pretty consistent, yeah. That's -

MR McAVOY SC: That's the normal way.

- UNCLE BRENDAN KENNEDY:** Yes, that's -
- 5 **MR McAVOY SC:** That's a normal way of respecting and acknowledging Traditional Owners' rights?
- UNCLE BRENDAN KENNEDY:** Yes, yep.
- 10 **MR McAVOY SC:** One of the other objectives in the report talks about -
- COMMISSIONER LOVETT:** I don't need a mic, I'm happy to talk. What date was that letter again?
- 15 **MR McAVOY SC:** 18 April 2024, Commissioner.
- COMMISSIONER LOVETT:** What's the date today, the 24th?
- MR McAVOY SC:** The 24th.
- 20 **UNCLE BRENDAN KENNEDY:** Six days.
- COMMISSIONER LOVETT:** Six days ago.
- 25 **UNCLE BRENDAN KENNEDY:** Good timing.
- COMMISSIONER LOVETT:** Yeah. Yep, six days ago. And there's no confirmed date in - sometime in April, was it?
- 30 **UNCLE BRENDAN KENNEDY:** Late April.
- MR McAVOY SC:** Late April.
- COMMISSIONER LOVETT:** So how many more days in April? No more than five. Pretty disheartening. I mean, you - how does that make you feel to receive that letter?
- 35 **UNCLE BRENDAN KENNEDY:** Yeah, the relationship between Tati Tati and the Mallee CMA is - there's no relationship, really. Just a letter. That's how I feel about it.
- 40 **COMMISSIONER LOVETT:** And you have tried to connect with them, to build a relationship, to talk to them about your rights, your cultural rights to this land, and what has been the response from them?
- 45 **UNCLE BRENDAN KENNEDY:** So we told them that we didn't want them to put the regulator in the first place.

COMMISSIONER LOVETT: Yes.

5 **UNCLE BRENDAN KENNEDY:** And they went ahead with it, which is an act of - yeah, not an act of being your friend or wanting to work with Traditional Owners at all, so -

COMMISSIONER LOVETT: Sorry.

10 **UNCLE BRENDAN KENNEDY:** It's - what was your question again?

COMMISSIONER LOVETT: I have forgotten my question - that's a rarity. What's the relationship like with the Catchment Management Authority?

15 **UNCLE BRENDAN KENNEDY:** Yeah, so they have just treated us like an enemy basically. We are an outlaw renegade, too hard to work with. Because, you know, we are asserting our rights. We are asserting this place as important to us. We don't want you to do this to our lagoon. But the way that they do business is the old - good old boys style, is we don't have to - well, we don't have to listen to you. You know, we are the authority and we have been given the power by the State. So that's the colonial way. We are going to put up another monument of conquests, even though it's small, but it's still a monument of conquests and we are going to continue on with the colonial project. So you're not to get in our way.

25 **MR McAVOY SC:** Sorry for interrupting. That's how you see that regulator. Which is for those who are not used to water lingo, that's a - that's a gate which allows a flow of water.

30 **UNCLE BRENDAN KENNEDY:** It's like a little weir, it's like a little lock. So, you know, we represent fish, alone, are asserting our sovereignty and rights as we should. We have been here 100,000 years and then the CMA represents the colonial takeover and maintaining, you know, the position of the State. The power. The power dynamics. And that's how it plays out here in real life.

35 **COMMISSIONER LOVETT:** You initially wrote to the CMA, when was that? When did you originally write to them?

UNCLE BRENDAN KENNEDY: 2021.

40 **COMMISSIONER LOVETT:** 2021.

UNCLE BRENDAN KENNEDY: This is -

COMMISSIONER LOVETT: And you got a response -

45 **MR McAVOY SC:** If you would wait a second, Commissioner Lovett, you can see the letter from the CMA and it refers to the date of the original letter from the - from the Tati Tati.

COMMISSIONER LOVETT: 22 February 2021 you wrote to the Mallee CMA.

5 **UNCLE BRENDAN KENNEDY:** Yeah, that would have been one of our many letters to the Mallee CMA and many, many meetings and many, many disappointments and let downs, and many, many lies. It's - in the end I just get - we just gave up on them. We - all right, you don't want to work with us. All right. We won't work with you. It's like - it's like - you know, a couple that have just had enough of each other. Don't like each other.

10 **COMMISSIONER LOVETT:** So how - you are very active in the community, and you have articulated pretty clearly today your ongoing connection to this place and asserting your rights. As I said you are active in the community, everyone knows who you are or your mob. How do you find out then about what's
15 happening here?

UNCLE BRENDAN KENNEDY: You just come - we just come out and we just - Oh. There's water here or there's no water here. Or the regulator is open, the regulator is shut. We just - it's just random.

20 **COMMISSIONER LOVETT:** And - like how does that make you mob feel, like coming out here and just seeing this?

UNCLE BRENDAN KENNEDY: Yeah, exactly like the mob - our mob come
25 out and we go you know, it's just - I mean, it's just trauma.

COMMISSIONER LOVETT: Yep.

30 **UNCLE BRENDAN KENNEDY:** You know, it's - we deal with the trauma, you know, the disappointment and - you know, and all the emotions. Anger. And it just makes us fired up and, you know. And it gives us fuel. But it's also inspiring us to - but initially, yeah, it's like, well, it's just putting, you know, another putting their boot down on us. You know. So to speak. Yeah.

35 **COMMISSIONER LOVETT:** And they know where to find you.

UNCLE BRENDAN KENNEDY: Yeah, yeah, pretty close.

40 **COMMISSIONER LOVETT:** Yeah. You live in the same place, was it, 50, how many years. 56 years?

UNCLE BRENDAN KENNEDY: I have been here 50 years. I - I have a little
45 joke, the CEO, I think I have seen her once in 10 years or something. I only live 45 minutes away. Yeah. But -

COMMISSIONER LOVETT: Do you want to make any comments? It does seem pretty opportunistic that we do have the Water Minister out on Country here today.

5 **UNCLE BRENDAN KENNEDY:** Look, I don't believe in coincidences.

COMMISSIONER LOVETT: Do you want to share any thoughts on that? About the timing of the letter and then the Minister giving evidence a little bit later today. Do you have any thoughts on that?

10

UNCLE BRENDAN KENNEDY: The timing is - but just the way the letter has been written too. It's just like I'm writing to provide - it's just telling you. Yes. Look, it doesn't really have - there's not much acknowledgment in there, is there? You know, that word "acknowledge". It doesn't really have much. But - yeah, I - look, I'm trying to be composed. I don't really - letters and that. But, yeah, it is quite - it's quite ironic that it's got the letter now, couple of days ago, and having Yoorrook here. So things happen for a reason.

15

20 **MR McAVOY SC:** Commissioner, I have just one more set of questions and then I understood that Mr Kennedy, Brendan, might like to make some closing remarks to the Minister before we finish evidence-in-chief. On page 15 of that water sharing - The Cultural Flows Management Plan from 2021.

25 **UNCLE BRENDAN KENNEDY:** Page -

MR McAVOY SC: 15.

UNCLE BRENDAN KENNEDY: 15.

30 **MR McAVOY SC:** Under the heading People and Culture, at objective 13 it says:

"Tati Tati Wadi Wadi people hold gatherings at Margooya Lagoon at least once a year to coincide with water delivery events."

35

Has that happened?

UNCLE BRENDAN KENNEDY: No.

40 **MR McAVOY SC:** Has there been any water delivery events to Margooya Lagoon during that period?

UNCLE BRENDAN KENNEDY: I wouldn't call them events. I think it's just a - yeah, sort of the way the river weir pool rises -

45

MR McAVOY: Yes.

UNCLE BRENDAN KENNEDY: - water comes in, if it drops water runs out.

MR McAVOY SC: And then it goes on.

5 "By 2023, Tati Tati Wadi Wadi visits Margooya Lagoon more frequently. These gatherings will support men's and women's business, cultural knowledge, sharing, and restores cultural connection to community to Country."

Have you been able to do that in - in concert with the rising of the water?

10

UNCLE BRENDAN KENNEDY: No. No. Because we don't know. We - we have got to guess or we have got to read the Country. The birds - following the birds and the pelicans. But, no, it's - there's no shared understanding or anything going on between Traditional Owners and Tati Tati in particular and Margooya Lagoon. It's, like, well it's someone else's managing it.

15

MR McAVOY SC: And those sorts of gatherings are really important for -

20

UNCLE BRENDAN KENNEDY: We saw that - you know, that we - that performance now, that will sustain our spirit for a - for a while now, you know. And then we have a shared story with our - our mob from - with all of you now. We just created a memory, a very memorable cultural spiritual experience. So that will keep us going for a while.

25

MR McAVOY SC: And so having these hearings on Country are important cultural -

UNCLE BRENDAN KENNEDY: Yeah.

30

MR McAVOY SC: - rejuvenation events for you and for your community?

UNCLE BRENDAN KENNEDY: Yeah, it's like - you know, we have got some of our people go up to the hospital to get dialysis. This is like our dialysis, you know. But if that makes sense.

35

MR McAVOY SC: If you are not able to organise these cultural events around the water flows because people aren't talking to you, how difficult does that make it to ensure that the young people are taught the things they need to know about these places? It would make it almost impossible.

40

UNCLE BRENDAN KENNEDY: Yeah. Pretty much, yeah. Very hard.

MR McAVOY SC: So that's a real effect on your culture, isn't it?

45

UNCLE BRENDAN KENNEDY: Yes, yes, absolutely.

MR McAVOY SC: So it says that - in the plan, objective 4:

"Tati Tati Wadi Wadi people's cultural knowledge, values and objectives are recognised and included in all water planning processes in Margooya Lagoon by 2025."

5

So clearly that letter from the Mallee CMA is the opposite of what you were hoping for by next year.

10 **UNCLE BRENDAN KENNEDY:** Yeah, absolutely. Yes. That's consistent. That letter is very consistent, which is not consistent with our aspirations.

15 **MR McAVOY SC:** You have provided the Commission with some detailed statements and the water sharing - the Cultural Flows Management Plan is a very strong document. We haven't had the chance to take you through every part of your statements today, are there any other things that you would like to say that I haven't taken you to and is there anything that you would like to say directly to the Minister now that, while you've got a chance, Brendan?

20 **UNCLE BRENDAN KENNEDY:** Yes. So we - we need cultural flows here. We need cultural flows here yesterday. And it has to be ongoing cultural flows. We need water handed back to Traditional Owners like - and not just a bit over there and a bit over there and a bit over there. But we need water. Our people across the State, all Traditional Owners, we need water handed back and we need - we need enough water. But we also need to be a part of determining where that - where we can see water opportunities to get back to us. So applying - you have got an
25 adviser, but we need our own. We have to have our own advisers in the water space to work with you, and there's enough people around the State that could do that. But, yeah, they are the two main things. Cultural flows is so - I think it's - it's so unstated because we are fighting against - the environmental flows industry is
30 trying to hold on but cultural flows is what needs to happen on Country from Traditional Owners, the living culture flows of water. So thank you. Thank you, Minister. Thank you.

35 **MR McAVOY SC:** Thank you, Brendan, for your evidence-in-chief. The Commissioners may have some additional questions for you. Commissioners?

40 **CHAIR:** Can I just say how important this hearing is for all of our people. This is but one example of how we are dealt with by governments from a faraway place and we with are sitting here and we are listening to you. I hear the frustration - hear the work, the care for the Country that you give through your people caring for your Country in the best way you can. I want to say that by doing this today you are on the public record and people will be able to hear this, our people - our people and other Victorians - will be able to hear this whenever they choose to seek some information about what we think about our Country, our
45 life and our life blood because everything is connected. We know that. Land injustice, everything is connected. It's a circle of life. It's about our identity, about

who we are, and it has sustained us up until now. I thank you. Thank you for having us here on this occasion. Thank you very much.

5 **UNCLE BRENDAN KENNEDY:** You are welcome. Thank you for the opportunity to give evidence.

COMMISSIONER LOVETT: In your view what needs to be done to heal Country?

10 **UNCLE BRENDAN KENNEDY:** Well, we have been here for 100,000 years. We are the best available science. We are the best experts there is and ever can be for Country. All that resources and responsibility needs to be in our hands. We have to be leading. Caring for Country, environmental - responsibilities for the environment and all of Country. That has to be in the hands of First Nations
15 Traditional Owner people. That's - that's the place to start. And water management, all the environmental water should be handed over to Traditional Owners to deliver water for the environment.

20 All of our people should be working in the environment. They shouldn't be working on farms, they shouldn't be working in supermarkets, they should be working on Country. So there needs to be a power shift. There needs to be - the State needs to reconcile with itself and transfer all that power to us to manage. We can start with the environment and water handed back. That's a good place to start. It's not everything.

25 **COMMISSIONER LOVETT:** I was going to say secondary to that, what does self-determination look like in a water context?

30 **UNCLE BRENDAN KENNEDY:** Yeah, self-determination in a water context is us making decisions about water and our water, and having our own people determine how water is managed on Country. And determining - and at the moment we can't do that. We don't have - we don't have anything in place. We have water officers around the State but we don't - we don't have that direct ability to be able to make decisions around water that affects all Traditional Owners in
35 Victoria. That's - and there, like we own - our current water holdings are 0.17 per cent. That is an absolute - that's an international disgrace. That's a human rights - that's violations on the United Nations Declarations of Rights of Indigenous Peoples. For our people to not have any say, management, ownership, control, authority over water - that's the quickest way to kill us is to take the water
40 off us. And I tell you what, the State has done an amazing job of doing that and they are still doing it. And it doesn't seem to be any intention of reversing that situation and there needs to be immediate action taken to make sure that water is handed back to all the Traditional Owners in Victoria. And that needs to happen straight away. We don't need to be waiting three or four or five years. We have got
45 funerals every week here, and those babies - they need to have this happen straight away.

COMMISSIONER LOVETT: And we haven't talked much today about economic prosperity through a water lens. Do you have any ideas around what could or should be done in the future? You have touched upon it a little bit, but do you want to elaborate any further on, you know - talk about cultural flows and handing that back and making sure that mob have got decision-making power and that. But what about from an economic prosperity lens?

UNCLE BRENDAN KENNEDY: Well, the water is getting sold. It is liquid gold. It's getting sold, traded, and it's been commodified and commercialised. We have water corporations, we have big almond companies who are sucking all the water out of our rivers. These big multi-national companies here are building all these huge dams and all these channels and they are draining the water out of our rivers. And they are making billions and billions of dollars and people are getting rich and we are dirt poor. You know, we are land rich but we are dirt poor. And we have no water. So that is what you call an extreme injustice. And the inequity that's happening and it's continuing to happen. There needs - so there needs - you know, there is obviously revenue that's being made by the State around water.

COMMISSIONER LOVETT: Yes.

UNCLE BRENDAN KENNEDY: And that's not being transferred across to help support Traditional Owners.

MR McAVOY SC: If you could speak up please, Commissioner.

COMMISSIONER NORTH: Can I ask you, how is that?

MR McAVOY SC: Maybe move the microphone.

COMMISSIONER NORTH: Is that better?

MR McAVOY SC: Yes, thank you.

COMMISSIONER NORTH: Can I ask you, Brendan, how do people get appointed to the Mallee Catchment Management Authority?

UNCLE BRENDAN KENNEDY: I'm not sure. I think there is an expression of interest that gets sent out. EOI. And I mean the Mallee, the Catchment Management Authorities have to have the majority landholders on those boards, or we know the Mallee does. So it's - you know, you have a stacked imbalance there of power and political and agenda situation amongst those types of water boards. So we tend to stay away from those types of government.

COMMISSIONER NORTH: Thank you.

UNCLE BRENDAN KENNEDY: But I think the Chair has just - they sent out an expression of interest and you apply and - but we should have our own - we

should have our own Traditional Owner water authority in this that covers right across the State.

5 **COMMISSIONER LOVETT:** What are some of the functions that that could perform?

10 **UNCLE BRENDAN KENNEDY:** That would be the authority to deliver, we are talking about environmental water and it would be cultural water, fish water and manage, you know, all the ecosystems, all the environments, all the cultural landscapes, all the species. They are doing it on our behalf and it's totally against our, you know, our cultural principles, our cultural lore and our history. So we need - we need a Traditional Owner water authority in this State.

15 **COMMISSIONER LOVETT:** Yes.

UNCLE BRENDAN KENNEDY: And we need our own Traditional Owner water adviser - advisers. So I think they are two things that can be achieved.

20 **COMMISSIONER LOVETT:** And do you mean an adviser direct to the Minister? Is that what you mean by that?

25 **UNCLE BRENDAN KENNEDY:** Well, with no disrespect to the gentleman sitting there who is the adviser, but I'm pretty sure he's not advising on our behalf. I don't know him much, I've just met him today, but I'm not sure we do have anyone that's advising for us in the water space in this State. Do we? So - it looks like a gap that needs - and we need our own - you know, we have got a Heritage Council, we have got Yoorrook, we have got the Treaty Authority, but we don't have a water council. If it wasn't for MLDRIN, Murray Lower Darling Rivers Indigenous Nations fighting across the whole Murray-Darling Basin and multiple States, that has been hard for MLDRIN, I will tell you that. Without MLDRIN - but yeah, we don't have a body to address water rights for Traditional Owners in this State. We have the Water Officer Network of the water officers, but -

35 **COMMISSIONER LOVETT:** So it's the ecosystem of Aboriginal rights in the water space. It's not just cultural flows, it's not just economic prosperity, it is everything.

40 **UNCLE BRENDAN KENNEDY:** Everything, yes.

COMMISSIONER LOVETT: I have seen the spark in your eye a few times over the years, today. But in particular with your people coming together and the young ones dancing there. Do you want to just talk about how proud you are, what you have achieved.

45 **UNCLE BRENDAN KENNEDY:** Very proud. Someone who has been in the water, in the language space to hear my niece talk powerful not only in language

but to be talking about water in such a way, and my sister Joyce and my cousin Stephen to be talking about - but particularly my niece talking - you know, there is voice. There is women's voice too, you know. Voice for water and for the grandmothers and granddaughters. And, you know, that has been locked out. You know, that's the part of our culture and voice that it's also been denied. You deny - if you deny me or my sister or any of us, and you are denying them and denying the grandkids. Like it's just - so it was very, very special and very powerful to see - to hear.

10 That was, you know- I mean, that - they were dancing for water. They were singing for water, you know. And then talked about it. So very - very powerful. And it shows the government, hey, we are sophisticated. You know, we have such a rich cultural contribution. It was just shown there. We are not the other story that they painted of us way back then. That's us. Yeah. All of us. And we are saying we go to your Country, we go to Wurundjeri, we go everywhere. You know. So we are capable. We are here to do it.

COMMISSIONER LOVETT: Cool.

20 **COMMISSIONER NORTH:** Brendan, when you were growing up and living around here, what did the lagoon looking like?

25 **UNCLE BRENDAN KENNEDY:** Well, I can remember - it's changed so much even in the last 10 years. It's just deteriorated and as a wetland and a water landscape it would be rich in - with all the - like that should be full of fish, birds, plants, and you should be hearing so much but you don't. You will see a few pelicans and water birds around, but you won't see fish in there. You don't see - where is all the water plants, aquatic plants in there.

30 **COMMISSIONER NORTH:** So were there fish in there those days?

UNCLE BRENDAN KENNEDY: Yeah, yeah. Fish.

COMMISSIONER NORTH: And why are they not there now?

35 **UNCLE BRENDAN KENNEDY:** They can't get in. They can't come in. They have been locked out. The fish have been locked out.

COMMISSIONER NORTH: It tells a story about being locked out.

40 **UNCLE BRENDAN KENNEDY:** Yeah, being locked out, yeah. We are born locked in but also yeah, we are locked out. Thank you.

45 **COMMISSIONER LOVETT:** One last one to finish off. Any other things to share that you want to see for the future, that you want to elaborate on or share?

UNCLE BRENDAN KENNEDY: Yeah, I would like to see all of our people working in the water and cultural landscape and the environment, and what they call eco services. I know we do have people whose careers have been in the, you know, catchment management and parks rangers and all the environmental services, but that should be all our mob. All Aboriginal people in those roles. And still, we don't want to get rid of them all, we want to keep them because the expertise that they all know. But, you know, like our babies - like I said, hey, Country is the boss. Then when they are old enough - but they already start - they are already starting to work by being here. So that's got to be all transferred over to our people. Our people - our people don't want to work in a bank, or a supermarket or a - you know, in an office. They want to work out here in Country. It feels so much better working - being out here. And we want to make sure that our species that are here today, that are still here. Because they are quite - they are threatened species here. The other thing too before I was born, the older ones here - the water was clear. My sister there, the water was clear and healthy. They could see the turtles and the fish and everything. And I've never seen that. And our kids will never, ever see that. Ever. But they have seen it. So can we get it back to that? That's the big \$64 million question. But at least still try to make the water healthy and - but you can't do that without the Traditional Owners because you have got 100,000 years of cultural knowledge and traditional science. Traditional ecological science and cultural knowledge science.

COMMISSIONER LOVETT: What leadership needs to be shown by the State in enabling your mob to be self-determining?

UNCLE BRENDAN KENNEDY: Well, we have got to keep talking to - yeah, this is the first time. Got to keep coming back. Keep talking to all the TOs. Keep building and building and committing and committing for change. Otherwise if it's just - the Government is just going to just continue with the project and then leave us behind. We - we hear about commitment, we hear about, you know, there is good intention and there's - but I think - I mean, really the leadership is start returning water back to Traditional Owners. That's the best way. Just return - start returning significant water back to Traditional Owners as soon as possible and start to build up Traditional Owners' capacity for us to be able to deliver that water and manage that water for our Country and manage Country. That will be a good place to start, I reckon. That's a good leadership. The others haven't done that. Set aside some money and that. But until we get water returned then everything is just - it's like just paper here. Thank you everyone.

MR McAVOY SC: Commissioner Lovett, there is just two questions quickly that I might ask of Brendan before we let him go. Paragraph 160 of your statement, you say that:

“Our goal is 500 jobs for Tati Tati people from land services.”

UNCLE BRENDAN KENNEDY: Yes.

MR McAVOY SC: And then at paragraph -

UNCLE BRENDAN KENNEDY: See one job supports 10 people here.

5 **MR McAVOY SC:** - 163, I think.

UNCLE BRENDAN KENNEDY: 500 jobs is 5,000 people.

10 **MR McAVOY SC:** At paragraph 163 you say:

15 “We are going to need people in the water sector alone. Tati Tati need to manage the river between Robinvale and Swan Hill. We need our own people to become scientists, palaeontologists, archaeologists, marine biologists to keep our fish species, our birds, our plants, our medicine plants, our food plants so we can be harvesting and growing and distributing those foods and medicine plants back to our people for their diet and their medicinal and cultural purposes.”

That's your vision?

20 **UNCLE BRENDAN KENNEDY:** That's it. That's the vision there. Old Man Weed, our medicine plant usually grows here. It's not here now. So, you know, this manipulation and controlling of this wetland lagoon here is impacting on our medicine Old Man Weed. And we were actually planning on harvesting it this month, but it's just not here growing so we have got to go somewhere else and find it. So -

25 **MR McAVOY SC:** Thank you. Thank you very much, Brendan. I have no further questions for Brendan at the moment. Given that we need to hear from the Minister and also make our way to the Robinvale Community Arts Centre. 30 Commissioners, I might ask that we have a 10-minute break just to stretch our legs before we commence with the Minister. Is that suitable?

CHAIR: Yes.

35 **<THE HEARING ADJOURNED**

<THE HEARING RESUMED

40 **MS McLEOD SC:** Thank you, Chair. So we will now resume with the commencement of the Minister For Water's evidence. She would like to begin by addressing some remarks directly to Uncle, and so we will do that first. And then we will commence her evidence here and finish her evidence in the community centre. Thank you, Minister.

45 **THE HON. HARRIET SHING:** Thank you very much. At the outset I would like to acknowledge and extend deep respect and gratitude for the opportunity to meet on Country here today. I pay my respects to the Traditional Owners on the

lands upon which we meet, particularly Tati Tati, and I also acknowledge all
 leaders and emerging leaders who are here today or indeed who may be watching
 online in the process of this Commission. It is with a profound sense of
 responsibility and honour that I am able to be here on Country today. To walk and
 5 to breathe, and to move on Country is to my mind the best possible way to connect
 with the subject matter that we are here to talk to, not just in my responsibility as
 Minister for Water, but also in my reflections as a member of government. No
 doubt we will have a lot to talk about in that space.

10 Brendan, the reason that I asked to sit next to you today is to provide a number of
 observations and I will hopefully be quite brief in this so that we can move on
 perhaps to some initial discussion here. When I heard you speak today, and when I
 listened to you speak it was with a sense of profound sadness but also
 15 determination that I hear and act upon the themes and the discussions that you
 have gone into today and through your witness statement. And I was talking with
 Cathleen Terry, and I want to thank the dancers and thank Joyce for that really
 important way to set the context for today's discussion, that this idea of layered
 dispossession comes back to language, the systems upon which language is based,
 20 the decisions from which voices have been excluded and the way that we find
 ourselves in a situation where the thousand cuts, as you've described them,
 continue to be felt today and continue to be made today.

I'm grateful for the generosity of a conversation that you have continued here
 today. I am also aware that it is an exhausting thing, this constant advocacy. It
 25 seems that when I speak the wind picks up, as was noted by Counsel before. I
 suspect it may also be a message to tell me to be brief so I will. What you have
 done today is added to the record of what is wrong, what has been wrong, how
 you've been wronged, and how we as Government can and must do better. Thank
 you. I am grateful beyond measure, but I'm also hoping that you can understand
 30 my desire to walk lightly but to act for determination and purpose. Thank you,
 Brendan, for today, and to everybody who has facilitated this preliminary
 discussion as far as the scene-setting and indeed your evidence. Thank you for
 your statement and for your participation. Thank you Commissioners.

35 **MS McLEOD SC:** Thank you, Minister. Uncle, we might ask you to take a seat
 back in the - Minister, would you please state for the record your full name?

THE HON. HARRIET SHING: My name is Harriet Claire Su Mei Wong King
 40 Shing and I am the Minister for Water in the State of Victoria.

MS McLEOD SC: Do you undertake to give truthful evidence to this
 Commission?

THE HON. HARRIET SHING: Yes.
 45

MS McLEOD SC: Thank you for your opening remarks. You may wish to make
 some further remarks when we move back into the Commission and we will deal

with the formalities of tendering your statement and other documents then. But in this special place where we now are it's important to ask you some questions around dispossession and touch on some of those aspects of your witness statement.

5

Minister, this Commission has heard evidence of the early colonial history of this state. Do you accept the dispossession from lands and culture of First Peoples was, as we have heard, unlawful?

10 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Do you accept that destructive effects of this dispossession, including as you have just said the layered dispossession of rights to and access with water and waterways was part of that colonial project?

15

THE HON. HARRIET SHING: Yes, and it is.

MS McLEOD SC: And that dispossession occurred, and is still occurring, on a devastating scale.

20

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Do you accept it was fuelled by the quest for wealth, land, minerals and waters?

25

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And that it created enormous inequity in terms of access to and use of waters?

30

THE HON. HARRIET SHING: As it continues to do, yes.

MS McLEOD SC: Do you accept there has never been an accounting for the waters taken from First Peoples in this State?

35

THE HON. HARRIET SHING: An accounting for - could I ask you to just elaborate a little on that?

MS McLEOD SC: Yes, accounting for the value of waters taken from First Peoples.

40

THE HON. HARRIET SHING: Sorry, I'm just wondering what you mean by "accounting for." In what sense?

45 **MS McLEOD SC:** So the value of waters taken from First Peoples, there has never been an accounting in monetary terms.

THE HON. HARRIET SHING: Right, in monetary terms, I beg your pardon.
Yes.

5 **MS McLEOD:** And that this compels governments to secure the economic prosperity of First Peoples from those waters, lands and other resources today?

THE HON. HARRIET SHING: Yes.

10 **MS McLEOD:** Do you accept that the rights, interests and responsibility of First Nations peoples are not fully recognised in the waters - the Water Act?

THE HON. HARRIET SHING: Yes.

15 **MS McLEOD:** And that they are largely shut out of meaningful management and planning for the sharing of wealth of Victoria's waters?

THE HON. HARRIET SHING: Yes.

20 **MS McLEOD SC:** Now, I just want to touch on some things we have heard from Uncle Brendan Kennedy this morning and you have had an opportunity to hear his evidence. Have you had an opportunity to also read his statement?

THE HON. HARRIET SHING: Yes.

25 **MS McLEOD SC:** So Uncle Brendan says in his witness statement:

"We have been dispossessed and dispersed from our waterways and forcibly removed from our rivers and now we want our water back."

30 Do you agree that Traditional Owners and First Nations never ceded their rights to land and waters?

THE HON. HARRIET SHING: Yes.

35 **MS McLEOD SC:** Does the Victorian Government consider that Traditional Owners, First Nations Peoples should have water returned to them?

THE HON. HARRIET SHING: Yes.

40 **MS McLEOD SC:** Does the Victorian Government consider that Traditional Owners and First Nations Peoples should be the managers and owners of their water and should decide how their water is used and by whom?

45 **THE HON. HARRIET SHING:** That is the essence of self-determination and that is one of the key pillars of the work that I'm determined to continue the answer to that question. In short then, yes.

MS McLEOD SC: So just on that issue of self-determination, Uncle Brendan said:

5 "We want to be drivers of water. We want to be instrumental in the management and ownership of water for our people. We don't want to be tacked on to the back of your trailer. We don't want to just be consulted, written up into your plans, and then have you misconstrue things and say that you have met your obligations. We don't want to be here just so you can tick boxes. We want to be heard and be part of the solution."

10

Can I invite your response to that statement by Uncle Brendan, please?

THE HON. HARRIET SHING: I think the statement that Brendan has made is heard and experienced so often by First Peoples, that irrespective of the way in which dispossession has occurred and the way it continues to occur, those themes of exclusion, of disadvantage, of an unwanted removal of access to decision making that provides benefit shows a system that has by design arisen in, as Brendan has referred to it, European systems of law and of language to almost perfectly exclude Traditional Owner identity and connection to Country. And I say 20 Country in a very broad sense, meaning all Country including Water Country. It could almost not be more perfect as a system to exclude Traditional Owner voice, perspective, and aspiration. Here on Country it is absolutely evident that care and connection is something that runs through the veins and the DNA at a cellular level, at an interpersonal level, at an intergenerational level of Traditional Owner communities of First Peoples. But that, because of the persistent and successful 25 dispossession – it's been described as a double dispossession, a trebled, quadruple dispossession - I see it as an ongoing dispossession which comprises multiple layers that amount to an aggregate of exclusion that Western, European systems of law have failed to recognise or have in fact been wilful in turning away from in a purposeful and deliberate way. 30

I also acknowledge that language is at the heart of many of the traumas and the sources of pain that continue to be felt to this day, and in that regard I want to perhaps reflect on the notion of sovereignty and we will, I hope, have an opportunity to talk further about this. 35

I've grappled for a long time with the notion of sovereignty when we talk about sovereignty having never been ceded, because to my mind the words that "It always was and it always will be Aboriginal land and Country" sit more easily 40 than the notion – the imperialist notion of sovereignty which arises because of the notion of conquest, of the overriding of an existing framework of connection. And that has been reflected upon in the abolition of the notion of terra nullius, the subset of which I think is the idea of what this means for water. And I think that in walking with purpose, language is an incredibly important part of making sure that 45 we are not further entrenching that dispossession.

I also want to acknowledge the ongoing sense of relegation of First Peoples' identity. This idea of consultation which it's almost lip service to the notion of self-determination, the transfer of power and decision making, of control, of operation, of management. That consultation and consideration of perspectives and positions does not mean a transfer of power, it may mean the incorporation of perspectives into a decision-making process, but largely that decision-making process will remain beyond the remit, the control or the opportunity for people to influence from a First Peoples perspective better outcomes. There are so many layers to what Brendan has said in his statement and here today, but I think the themes of dispossession ring clearly in every element of the application of European law and that European law guiding, as it does, our Western notions of rights and of access to ownership and the commodification - the idea of resources, again that idea of a resource rather than a connection - gives me, certainly, but I think Government pause for thought and active change around the way in which these things are addressed. The way in which conversations and discussions happen. And I know that this is about doing more than talking, I know that this is about the deeds that flow, and need to flow, from the discussions to date but I think in the talking and in the language there is a source of power that is there to be transferred and there is a landscape upon which the removal through the recognition of disadvantage in language can and should be pursued.

MS McLEOD SC: So just picking up on a couple of the threads there. In terms of sovereignty –

25 THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Is the sovereignty of First Nations peoples in this State reflected in water laws, policies and practices at the moment?

30 THE HON. HARRIET SHING: No.

MS McLEOD SC: And we can come to the detail, but in a broad sense what has to happen to ensure that there is recognition of that sovereignty?

35 THE HON. HARRIET SHING: In order to recognise sovereignty - and, again, my earlier remarks about my uneasiness with the imposition of that term and the necessity for it, this is about the elements of self-determination that need properly to sit at the way in which decisions are made, but that primarily there needs to be access to water for that to happen. And that that involves an understanding within historical legal frameworks, current frameworks of law and of regulation. Whether that's in gazette, or in law, or in regulation, or in statute. And where we head from here. Where we head from here when we try with the tools that we have available, with the great grace and patience - patience which I think is far more than what we deserve from First Peoples - to understand the nature of the problems but also to design solutions, to have solutions designed to resource and to equip that to happen. That outcomes can flow from this that are at the essence of self-determined notions of the transfer of power. That that in and of itself can and

indeed should reflect this notion that it always was and that it always will be Aboriginal Country and land and water.

5 **MS McLEOD SC:** Do you accept, Minister, that the commodification of water and disregard for cultural significance of water has caused in some cases irreparable harm to the Victorian environment?

THE HON. HARRIET SHING: Yes.

10 **MS McLEOD SC:** Uncle Brendan said to us in his witness statement:

"We are river people, we are water people. Taking our water away from us depletes us. We can't survive without it."

15 And he spoke this morning about the lagoon and the direct impact on the health of the Tati Tati people emotionally, spiritually, physically and culturally. Do you accept that in addition to the severe and in some cases irreparable harm caused to Victoria's environment by the commodification of water and its extraction from the landscape that it has also caused severe and in some cases irreparable harm to
20 the health of First Peoples?

THE HON. HARRIET SHING: In so many cases dispossession and disconnection, the dislocation of connection between land and water, the systems of regulation that have made it increasingly difficult for that connection to be
25 established or maintained or respected has caused harm, continues to cause harm, but that that harm is felt in all manner of different ways. In the same way that Brendan described the lack of water being like the lack of blood flow to an arm where you will lose that arm without that supply of blood: Our creeks, our waterways, our river systems, Margooya Lagoon that we are here at today need
30 that water. And that with healthy Country there is healthy community and that health means health in so many different ways. We see what happens when the denial of opportunities for wellbeing and for participation occur across First Nations. We see that in so many ways. This Commission is charged with the work of understanding the nature of dispossession, of dislocation, the awful injustices
35 that have been perpetuated and the way in which systems have arisen over the years to confound at every turn the opportunity for healing. Truth-telling and making space for this conversation - and I say making space because I feel as a member of government - I feel space to stand back and to enable this process of truth telling to happen and to be respected and to be acted upon is at the heart of
40 what I hope will be an opportunity for us as governments to do better here in Victoria, but it is also my hope that that can extend beyond these State boundaries, given that water, as we know, does not respect State boundaries. To that end in terms of my evidence today I suspect we will also go into that shortly.

45 **MS McLEOD SC:** One of the things that Brendan called for was for Traditional Owner advisers, and he makes that call in his witness statement as well. Would

you be open to having a Traditional Owner adviser or multiple advisers on water policy and decision-making?

5 **THE HON. HARRIET SHING:** I would really like to work on what could work in the space of direct advice and what that looks like. We have partnerships, we have a range of processes. There are steps that involve ongoing discussion and in many instances those discussions - that work - is being done with the intention of resourcing and improving systems, changing systems that exist in order for self-determination to take root, to be supported to grow. I would welcome any opportunity to be better in the governance of the systems within which I currently operate but also the systems of reform that might be available. Whether they are through those formal structures or whether they are through conversation and discussion within that advisory capacity. I don't want to sound like a politician, I suspect I just have. But the short answer to that – yes, and I would like to continue this conversation.

MS McLEOD SC: So just to be clear, given the long answer -

20 **THE HON. HARRIET SHING:** Yes, sorry, my apologies.

MS McLEOD SC: Yes, you are open to Traditional Owners having a direct advisory role -

25 **THE HON. HARRIET SHING:** To the Minister.

MS McLEOD SC: On issues of water.

30 **THE HON. HARRIET SHING:** Yes, yes, absolutely. I also want to - sorry, can I just add, I'm really grateful to the Traditional Owners with whom I have had and continue to have discussions and engagement. Whether that's through formal structures with the Birrarung Council, or work on Country, the time that I have spent listening and building connection with First Peoples has been enormously influential in the way in which I go about the work that I do. And as I will say later, I'm still learning and I think that I am indicative of what is happening across the system that we have in Victoria by which government can learn. I'm one individual in government doing that, I'm determined to make sure that I can continue to do that. If that involves advisory discussions and processes, whether they are formal or informal, I cannot see that that learning will not be better for it.

40 **MS McLEOD SC:** Commissioners, those are the only questions that I had at this time. Do the Commissioners have questions for the Minister on those matters? We can certainly revisit them.

45 **COMMISSIONER LOVETT:** I will come back a bit later, but Minister, when you look out there what do you see?

THE HON. HARRIET SHING: I see Country with a water line that has come down in recent times. I see the prints of roos or wallabies. I see grandmother trees. I feel history here. I feel connection that is an intrinsic part of First Peoples here. I see a waterway that is subject to the application of systems which we have heard
5 from Brendan about today. The manipulation of the movement of water is seen here today. And the changes over time, I can only imagine, as Brendan indicated in his evidence, what this place must have been and I can imagine also what it might be.

10 **COMMISSIONER LOVETT:** More questions later for you.

MS McLEOD SC: Thank you, Commissioners. Thank you, Minister. We will pause your evidence there. Because we are about to move and pack up, it's appropriate to record our thanks to Commission staff and Solicitors Assisting for
15 making arrangements so that we could be here and to thank the Tati Tati for their welcome and allowing us to set up our hearings here today.

CHAIR: Thank you, Minister and thank you everybody that enabled us to be in this setting today. I think it's a very special moment in the story of the Yoorrook
20 Justice Commission's work. Thank you. Thank you all. Thank you.

MS McLEOD SC: So we will adjourn to the community hall for lunch and -

25 **CHAIR:** What about a time for resumption, Counsel?

MS McLEOD SC: I think we will say 1.30.

CHAIR: 1.30.

30 **MS McLEOD SC:** Thank you, Chair.

<THE HEARING ADJOURNED