



TRANSCRIPT OF DAY 12 – PUBLIC HEARING

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

MONDAY, 29TH OF APRIL 2024 AT 11:30 AM (AEST)

DAY 12

HEARING BLOCK 6

MR TONY McAVOY SC, Senior Counsel Assisting
MS SARALA FITZGERALD, Junior Counsel Assisting
MR TIMOTHY GOODWIN, Junior Counsel Assisting
MS BENNETT SC, Senior Counsel for the State of Victoria
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<THE HEARING COMMENCED AT 11:34 AM

CHAIR: Welcome everybody, welcome to this historic hearing of the Yoorrook Justice Commission. We are going to start with a Traditional Owner, Andrew Gardiner speaking to us before we commence our business. I can't see Andrew. Andrew, where are you? Please.

UNCLE ANDREW GARDINER: Clapsticks here with Wurundjeri Woi Wurrung on them. So I won't be throwing them away or making too much noise. Andrew Gardiner, can you hear me all right? Good. Andrew Gardiner. I am the Deputy Chair at the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation and also an Elder of the Wurundjeri people and also represent the Wurundjeri Woi Wurrung on the First Peoples' Assembly, Victoria. I would like to add some comments that were probably provided up at the Healesville - at the Healesville Sanctuary at the Coranderrk bushland, but also earlier by Aunty Joy.

I want to acknowledge all the Aboriginal and Torres Strait Islander people in the room, particularly Elders that are here and other Elders that are here from around the State, acknowledge them and pay respects to Elders past, present and emerging.

What I wanted to comment on is that our traditions are born out of our cultural respect for Elders, who are our cultural authority, our cultural knowledge holders and our wisdom-givers. We believe in what our Elders and ancestors tell us as being the truth, as we have an oral history, not a written one. Our history and customs have been passed down for thousands of years through stories around campfires.

My ancestry is through my mother, Waria Terrick-Gardiner, my grandmother, Jessie Jemima Wandin Terrick, my great-great-grandfather, Robert Wandin, my great-great-grandmother, Annie Borate, sister of Barak, Uncle William Barak, my great-great-great grandfather, Bebajan, head man of the Wurundjeri Woi Wurrung clan, of the Wurrung people back in the 1830s. He was around in the time when Batman tried to introduce his treaty then. We can say as we are right people for Country, our traditional Country is from the mouth of the Werribee River in the west, north along the river to its head waters in the Great Dividing Range, then easterly across the range to Mount Baw Baw and south through Bunyip and the westerly along Mordialloc Creek.

A summary: Since the mid-1800s we had our traditional lands sold from under us without our consent. We have never ceded our sovereign rights. We have been dispossessed, pushed onto missions that were like concentration camps, having to get permission to do almost anything from the mission manager and the Aborigines Protection Board. When the missions closed in the early 1900s, our people were expected to assimilate into the rest of society, but we were rejected with racism and discrimination. Then under further government policy our children were forcibly removed to break down our families and communities. However, we have survived these controlling and genocidal policies of the past.

Some details: In 1835 John Batman came to this area, swore a treaty with our ancestors near the Merri Creek, this was spoken about a little bit earlier with Auntie Joy. This document was written in longhand, in English prose, with common law accents. It did not have Aboriginal cultural lore expressed in it. That document
 5 basically gave us all the rights of ownership - sorry. That document basically gave him all the rights of ownership and could be seen today as being the first property developer. Our ancestors understood from limited translation that Batman sought short-term occupancy and they agreed to a Tanderrum, a temporary use of the land, a bit like a temporary visitor's visa, but unfortunately that became a permanent
 10 residency. That treaty was later made void by the governor of Van Diemen's Land. Copies still exist in the Melbourne Museum.

Four years later, 1839, vast tracks of our traditional Country were sold from us between the Plenty River and the Werribee River. We had not ceded our sovereign
 15 rights to our Country, nor did we sell it or give it away. So how did a government, which was not in this place, have the authority to sell our land? In only two years it was sold to just 29 British men. Our people were never compensated for the loss of this land, after being scared off by - off our lands by gunfire that were never heard before. Our ancestors became malnourished and sick, as they could not hunt and
 20 gather their traditional foods.

1860s, 1862 particularly, the first of many missions were established around the State. Our people were herded on to missions to be totally controlled. Our people had to ask permission from the Aborigines Protection Board whether they could marry,
 25 where they could build a hut, what skills they could learn, whether they could leave the mission to find work or even travel to visit sick relatives. But they had to dress like Europeans and attend church on Sundays to listen to Christian sermons. In the late 1890s the Aborigines Half-Caste Act was passed in state Parliament. Just prior to that the Parliament didn't exist until the 1851, yeah, Parliament House wasn't built
 30 until 1856.

So anybody who had white parentage had to leave the mission under that Act. 1924, the Coranderrk Mission was closed and by the 1930s all missions had been closed
 35 around the State. Aboriginal people were expected to integrate into general society. Only thing, racism took over. They were rejected, forced to live on the outskirts of town, became known as fringe dwellers. This year marks 100 years since the mission at Coranderrk was closed and actually 200 years since the birth of Uncle William Barak, both these things are being celebrated this year by our mob. You have heard or aware of many treks Uncle Barak made from Coranderrk to Parliament House, the
 40 best part of a day and a half's walk, and two days if it rained, along the way to hand deliver petitions that were received and they were told to return, home, these petitions were never really properly acted on.

Government policy required our children to be forcibly removed and stolen from
 45 their families, supposedly for a better life, but far too often they were sent to orphanages to be trained as domestic servants for the girls or farm hands for the boys. Both were preyed upon and abused by ruthless white overseers. These children

became known as Stolen Generations. This was designed to break down our families. We have survived all forms of genocide attributed to us as a people, by invaders who purposefully dispossessed us and unlawfully, L-A-W and un-lore-fully, L-O-R-E, treated as inferior. As was noted earlier by Auntie Joy, the returned servicemen from

5 the First and Second World Wars did not receive the favours of a grateful country like their white counterparts did with soldier resettlement blocks to restart their lives. Our people were decamped and told to return to the Mission. They had to find their own way home.

10 Excepting the past can give us understanding and direction for a new and better future, the freedom and equality. Everybody has the right to a free and fair life. It is the support that we require for our self-determination that will give us and get us there through Treaty. We have been a part of this landscape for more than 65,000

15 years and as the longest living continuous culture in the world, Victorians should recognise and appreciate this fact. We are the First Peoples of this Country. So from the tips of the leaves of the trees to the roots in the ground we share our Country with you today. Wominjeka (speaks Wurundjeri) welcome to the Traditional Country of the Wurundjeri clans of the Woi Wurrung people. (Speaks Wurundjeri) Thank you.

20 **CHAIR:** Thank you, Andrew. Thank you. Could I welcome you all to today's hearing of the Yoorrook Justice Commission, it is truly historic in that it's the first truth telling process of its kind in Australia. I also want to put on the record a thank you to Auntie Joy Wandin Murphy for the Welcome to Country and to her son Craig, for the smoking ceremony. The Commissioners are very grateful for your presence

25 here today. I would like also to acknowledge the Wurundjeri people who are the Traditional Owners of the lands upon which we are sitting today. Shall I go to Counsel for the record? Over to you, Tony, for the opening of the official.

30 **MR McAVOY SC:** Thank you, Commissioners. I appear as co-senior Counsel Assisting this Commission today joined by Junior Counsel, Sarala Fitzgerald and Tim Goodwin. On behalf of Counsel Assisting and Solicitors Assisting we acknowledge the Wurundjeri people and all First Peoples of Victoria in this hearing. Commissioners, the first witness today and only witness is the Premier of Victoria. We might, before going to the witness hear from Counsel Assisting for the State.

35 **MS BENNETT SC:** If it please the Commissioners, I appear with Ms Keating and Dr Hilly on behalf of the State of Victoria. And in so appearing I would like to acknowledge the Traditional Owners of the land in which we meet, the Wurundjeri people of the Kulin Nation and I pay my respects to their Elders past and present,

40 and I extend that respect to all First Nations people here today and express our gratitude for our inclusion in ceremony this morning, if it please the Commission.

CHAIR: Thank you. In continuing I have a little bit more to say before we continue on. But did you want to swear the people?

45 **MR McAVOY SC:** May it please the Commission. Are we hearing from Commissioner Lovett at this point?

CHAIR: Me, first. I wish to pay my respects to all Elders past and present, and acknowledge all Victorian Traditional Owners and I take this opportunity to again, acknowledge on the record Commissioner Hunter, Commissioner Lovett,
 5 Commissioner Walter and Commissioner North. As I said, today is an historic moment in the 236 years of colonial rule in Australia. Today hearing evidence from the Premier of Victoria, Jacinta Allan is an historic moment that I hope everybody who has been present today will remember and talk about in the future to their children and grandchildren. This is the first time a head of State has appeared before
 10 an Indigenous-led truth-telling Commission.

Last week Premier Allan visited Wurundjeri land that was part of the former Coranderrk Aboriginal Mission, near Healesville. The story of Coranderrk in many ways is the story of injustice against First Peoples in Victoria and of the strength and
 15 the resistance our people continue to show in response. From 1835 onwards the Wurundjeri had their lands and waters taken by the European colonisers. Led by Simon Wonga and Barak they successfully advocated for a reserve where they could raise their families, for many years the reserve prospered. Greed, racism and mismanagement caused the so-called permanent residence to be broken up. The
 20 Commission was shut down 100 years ago as Andrew has said.

Then in 1948 the remaining land was given to the Returned Soldier Settlement Scheme, none of that land went to Aboriginal returned soldiers. Today less than 10 per cent of the original Coranderrk Reserve has been returned to Aboriginal
 25 ownership. In 1968 WEH Stanner talked about the Great Australian Silence. He argued that Australian history was infected by a cult of forgetfulness practised on a national scale. Sadly, history is written with those with power, the invaders, almost always ignoring the Voices of First Peoples. This leads to a distorted view of the past and does a disservice to us all. We all suffer and are the poorer when the true history
 30 of this place is not known.

For decades, First Peoples of Victoria and our allies have fought to correct the historical record in this Country. Yoorrook would not have been possible without their strength and resistance. Truth-telling is about including our voices about the
 35 history of these lands on the public record. By knowing and understanding the truth The Great Silence can be ended. We can build a shared understanding about the injustice that has occurred. All Victorians can work together to right the wrongs of the past and build a better and richer future for all Victorians.

40 Premier, I thank you for appearing before Yoorrook today. Your words will live on the public record for generations to come. When you leave here today, I ask you to live up to your words with your actions. First Peoples have faced a long history of being let down by successive governments and their leaders. Broken promised, unfulfilled commitments and apologies followed by inertia. Unless accompanied by
 45 genuine and lasting change, acknowledgements and apologies mean little. Worse, they give the impression that action is coming whilst maintaining the status quo. And I remind you that the status quo for our people is a child protection system in which

governments remove our children from their families and communities at horrific rates nearly two decades after the policy to The Stolen Generations. The status quo is the mass imprisonment of our people, more than three decades after the Royal Commission Into Aboriginal Deaths in Custody. Racism and inequality affect First Peoples in almost every aspect of our lives from schooling and work, to getting housing and accessing health care. There is an unbroken line of injustice which runs from the original theft of our lands and waters until today.

The truth is we cannot secure justice for First Peoples without transforming the laws and policies which, by design, continue to disadvantage us. The evidence Yoorrook has heard is clear. First Peoples need the power, the resources and the authority to make decisions about the issues that affect our lives. The Great Silence that Stanner spoke about must end. During Yoorrook's term, that silence has come to be filled by the voices of Victorians First Peoples and I thank all of those who have come to speak with us, First Nations and other Victorians. Those of you who follow - and those of you who follow us and visit us for the hearings, I thank all for being here. Now is the time to build a better, shared future for all Victorians. Now is the time for change for our people, for action and for justice.

Premier, as we move forward we must move beyond words. The power imbalance must end. Implementation of the recommendations articulated by First Peoples and, indeed, by the Commission are urgent. We do not want to be talking about failure of this Commission in 30 years' time. Premier, your evidence must become, and lead to, real change for our people. Thank you for coming today.

COMMISSIONER LOVETT: Thank you, Chair. Premier, our people have been waiting over 200 years for this day to come. For the past eight months the Yoorrook Justice Commission has extensively travelled this State investigating the injustice experienced by First Peoples in relation to our lands and waters since colonisation. We gathered a compelling body of evidence about colonisation processes and their impacts for Victorian First Peoples, and about current laws and policies failing to properly address these injustices. We started gathering evidence through public submissions under notices to produce and from over 850 Traditional Owners across a series of roundtables.

Guided by this background material and First Peoples' direct voices we commenced our formal hearings in Portland on Gunditjmarra Mirring. Portland was the first permanent occupation by European colonisers of First Peoples' lands in this State. It was a start of an illegal land grab on a massive scale, led by squatters and pastoralists that spread across Australia. Historians told Yoorrook that the theft of First Peoples' land in Victoria was the swiftest and most rapid expansion of any colony in European history. We heard distressing evidence about the slaughter and massacres committed by colonisers who occupied the land grab and the failure of colonial governments to properly protect First Peoples.

It was openly assumed in the initial stages of the colony that First Peoples would simply die out. Within 20 years of the first permanent settlement, the population of

5 First Peoples in Victoria had plummeted by around 80 per cent to just under 2,000 people. Our lands, our waters, our lives were taken with shocking speed and brutality. Many Victorian First Peoples were forced to live on missions and reserves and forbidden, forbidden, Premier, from using language and practising their culture and ceremony. More than one witness has observed that the missions and reserves system marked the beginning of Aboriginal deaths in custody.

10 Yet despite all of the injustices for Victorian First Peoples, we have heard many of them signed up to fight in World War I, World War II and the Vietnam War, wars which were not ours. Only to return home to racist laws and policies that excluded them from soldier settlements except for two cases. Even worse, some saw of the supposedly permanent Aboriginal reserves for the protection of First Peoples were closed and carved up to be granted as farming land to white settlers - soldiers. Sorry.

15 This, Premier, is a double dispossession. These injustices have never been recognised or addressed. Due to the strength and resistance of First Peoples, there have been steps forward under Native Title and the Traditional Owner settlement Agreement. However, Traditional Owners have told Yoorrook that despite their hard-fought gains in land rights, they are simply fighting over the crumbs left on the table after
20 the State has protected the rights of other interest holders and that of the - and the State's had its own full share. And even then, as a number of witnesses have told us, these laws and policies have forced and are forcing First Peoples to fight each other for the crumbs.

25 Last week we heard from your Ministers, Premier, about the extraordinary amount of sums generated from lands and waters taken from First Peoples. \$1.89 billion in revenue - dollars in revenue from forestry and grazing licences in a 13-year period. \$83 billion in the revenues to the state from water in the same time period. \$287 billion of gold extracted from our lands since 1851. Minister Shing, Minister
30 D'Ambrosio and Minister Dimopoulos were all asked how much of this wealth is shared with Traditional Owners directly. They all gave the same answer, none.

35 Yoorrook has been repeatedly told that the current land rights mechanisms in Victoria are not fit for purpose. Traditional Owners and State witnesses both agreed that things must change and change must start with self-determination. Yoorrook has heard that when power, resources and authorities are transferred to First Peoples, our communities thrive and prosper. When First Peoples can care for Country, everyone benefits. Premier, we are here today in the hope of a better understanding your
40 government's commitment to change and reform, to right the wrongs and injustices of the past and those injustices that continue to this day.

45 Self-determination, true self-determination including through treaties is already happening for First Peoples - sorry Indigenous peoples across the world, including in other former British colonies. Australia and Victoria, our State, is lagging behind. Premier, your government, through establishing this truth Commission and with its commitment to Treaty, has chosen a path towards highlighting and addressing these injustices. Commissioners wish to acknowledge the participation of a number of your

Ministers in Yoorrook processes and the frank and sometimes heartfelt acknowledgement and apologies of wrongs, and opportunities for a better shared future. But it is your government's actions and the success of those actions that First Peoples are relying upon, rather than your words, Premier.

5

The evidence Yoorrook has gathered shows there is a way ahead for a better shared future for all Victorians. When the State and First Peoples come together as equals we will all prosper. You are the first sitting Premier to come before a truth-telling Commission in Australian history and you have the ability to lead our State to negotiate the first ever Treaty in the nation's history. I don't want my children and your children, who I understand are of a similar age, having to fight the same fight that our ancestors, Elders and community have had to fight. Let us not leave it to future generations to make right on the wrongs. So all our children can grow up sharing a prosperous future that we can all be proud of, Premier, thank you.

15

CHAIR: Thank you, Commissioner Lovett. Counsel, may we continue appearances? Thank you.

MR McAVOY SC: Thank you, Chair. I call the Honourable Jacinta Allan MP Premier of Victoria. Of course, Commissioners, the Premier is here and available and ready to proceed. Premier, could I ask you to tell the Commissioners your full name?

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THE HON. JACINTA ALLAN: Jacinta Marie Allan.

MR McAVOY SC: And, Premier, the evidence that you are about to give, do you undertake to provide truthful evidence to the Yoorrook Justice Commission?

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THE HON. JACINTA ALLAN: I most certainly do.

MR McAVOY SC: Commissioners, I understand that the Premier has an opening statement which she would like to deliver. I will, before she commences indicate that it's planned to proceed through to lunch at approximately 1.30. But if the Premier at any point needs a break or the Commissioners, of course, we can accommodate that.

30

THE HON. JACINTA ALLAN: Thank you.

35

MR McAVOY SC: Would you like to proceed with your opening statement?

THE HON. JACINTA ALLAN: Thank you. I want to begin by acknowledging the Traditional Owners of the lands in which we are on today, the Wurundjeri peoples of the Kulin Nation and pay my respects to their Elders, past and present. I would like to extend that acknowledgment to the Traditional Owners of the land on where I live and I am lucky to represent. I am proud to call Bendigo home and I am prouder still to know that the Dja Dja Wurrung people have called it home for tens of thousands of years. I extend that same respect to all Traditional Owners and First Peoples across Victoria, including the First Peoples who are watching the Commission's proceeding today.

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I acknowledge that sovereignty was never ceded, and that Traditional Owners' spiritual and ancestral ties to their lands and waters can never be extinguished.

5 Thank you, Commissioners, for the opportunity to appear before you today as part of
this important truth-telling process. It is truly an honour to be the first head of
government in Australia to participate in a process of this kind. I would also like to
thank you for your work to date and the valuable difference you are making in
10 maintaining their connection to culture and Country, Country which is now referred
to as Victoria.

When the British first arrived, more than 35 languages were spoken, between 300 to
500 clan groups lived and flourished here, tethered to this place by tens of thousands
15 of years of history and the longest continuous culture, living cultures in the world.
Evidence of First People's continuous connection can be found across Victoria, a
map that stretches the breadth and depth of our State. From the Aboriginal rock art at
Gariwerd, in the Grampians to the Buchan Caves in East Gippsland.

20 Last Tuesday I had the immense privilege of visiting another part of our State that
holds distinct importance. Located on Wurundjeri land, Coranderrk was the home to
the former Coranderrk Aboriginal Station. I was welcomed by Commissioner
Sue-Anne Hunter who has a deep connection to this place. It was established under
the auspices of the so-called protection policies. In reality it is a place where First
25 Peoples' lives were dictated and controlled. And despite this and, indeed, in the face
of this, Coranderrk's residents resisted. One of the many acts of resistance that speak
to Aboriginal people's enduring strength and survival.

Today Coranderrk has become a site of cultural revival, babies are welcomed to
30 Country and coming of age ceremonies have been reawakened after more than 180
years of colonial suppression. Sitting alongside Commissioners Bourke, Hunter and
Walter and speaking to some of the young women there, they told me what it means
to be able to practice their culture on Country again, what it means to be able to pass
that on to their babies and children. I wanted to make special mention of Coranderrk
35 and those women because I think it says something powerful about First Peoples'
resistance, but also about the purpose of Treaty and Truth in Victoria.

There are many reasons to tell the truth, and I am sure just as many perspectives on
what those reasons are, but for me the purposes are threefold. Truth matters to our
40 past our present and to our future. It matters to our past, because still the record of
our State's history is incomplete. Like many Victorians, my formal education of
Aboriginal people's histories and experiences was limited. To be clear, that limitation
was not an accident, an oversight or absent-mindedness. It was part of a deliberate
and systematic attempt to erase First Nations people from our State's history, to
45 somehow cross out tens of thousands of years of connection to Country, to blot away
the bloody stains of colonisation.

The process of truth-telling is a refusal to submit to that silence. The record this Commission will hand down will mean at long last the truth of our State's history is told. The murder, the massacres, the dispossession of culture and Country, the land taken away, the way of life destroyed. The children who never came back home and those who are still trying to find their way back. I also want to acknowledge that it's not enough to merely know this history. We do need to learn from it and we need to act on it too.

Because as the work of the Commission has made very clear, our history continues to live on in our present and I want to acknowledge there is an unbroken line between the dispossession and violence of the past and the lives of First Peoples today. I also want to acknowledge and put very clearly on the record, that from the beginning until today the policies and practice of government have created the gap that exists between Aboriginal and non-Aboriginal Victorians. Whether ignorance or deliberate intent, we have driven that disparity. And as the Commission has noted, that disparity continues to play out in the lives and the life outcomes for Aboriginal people.

Acknowledging that ongoing injustice demands an honest recognition that despite efforts and intentions we still have a long way to go, and it is the reason why we are here today. As Premier of this State I come to the Commission with purpose. I am committed to truth, Treaty and self-determination for First Peoples. As Commissioner Bourke said, this process is not about making any one individual feel guilt or shame. Instead, it is about reckoning with our past, being honest about our present and reaching for a better and fairer future for First Peoples.

And that begins and ends by listening. To me it is pretty much commonsense that when you listen to people you get better outcomes for people. And if truth is about listening to First Peoples' experience of injustice then Treaty must be about listening, genuinely listening to how that injustice can be addressed and working together, empowering First People to address it. I look forward to your questioning today. Thank you.

CHAIR: Thank you.

MR McAVOY SC: Thank you, Premier. Now, you have assisted the Commission by preparing a statement dated 18 March 2024 and you have had the opportunity to read over that document?

THE HON. JACINTA ALLAN: Yes.

MR McAVOY SC: And you are satisfied that the contents of that are true and correct to the best of your knowledge.

THE HON. JACINTA ALLAN: Correct.

MR McAVOY SC: Commissioners, I tender the statement of the Honourable Jacinta Allan MP Premier of Victoria. The document will be given a document number in due course. Now, Premier, I just want to ask you a question about your opening statement. Of course, you are here as Premier in your official capacity, but is it fair to say that the opening statement disclosed some level of personal commitment to the truth-telling and Treaty processes that we are all involved in?

THE HON. JACINTA ALLAN: Yes, it does.

MR McAVOY SC: Can you explain for the Commissioners what that level of personal commitment is on your behalf?

THE HON. JACINTA ALLAN: My personal commitment is built both through the time I have served as a member of Parliament. I mentioned in both my witness statement and in my opening remarks, I am very proud to call Dja Dja Wurrung Country home. It is the place I was born and grew up in, raising my family in and have a deep connection to the community and to the area. And through my time as living there, in beautiful Country, but also too as my role as a member of Parliament I have come to learn the history of our State, that I was not necessarily taught during my formal education. Being of a generation where First Peoples' culture and connection to Country was not celebrated as, again, as I said in my opening statement, it was one that was largely erased from the education of the time - of my time.

And so it is working through the process in preparing for today's hearing, as my role both as a member of Parliament and now in various roles as a Minister and now Premier, it really does come home to me just how critically important Treaty is, given that history that has not been told, given the history that must be told, but given how we also must take the opportunity to work towards Treaty, because as Commissioner Lovett mentioned, the international evidence is there. Treaty is what makes the change. Treaty is what rights the wrongs of that initial dispossession of colonisation, and it is with the learnings that I have come to through this process and my own work as a member of Parliament that I bring that personal commitment to Treaty process today, and on behalf of the broader government.

MR McAVOY SC: Thank you, Premier. As you have just stated, the opening statement, together with the statement you prepared for the Commission also demonstrates that you have taken with the utmost seriousness your role as leader of the State and leader of the government. Can you explain for the Commissioners just in brief terms, why it is so important that this process is led by the leader of the government?

THE HON. JACINTA ALLAN: It gives - it gives an unequivocal - sends an unequivocal message that government is determined to be partners through Treaty process to bring about the change, and that is particularly important in a time where these questions are challenged by others. That I, on behalf of the government, and I must say with the absolute commitment and support of my colleagues that we

continue to demonstrate through our words and actions. And I acknowledge they are actions that still have some way to go, in terms of addressing the historic wrongs and working towards the Treaty outcomes, it makes it very clear that government is resolutely determined to work with First Peoples to achieve Treaty in this state.

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MR McAVOY SC: Thank you, Premier. If we might see document number one on the screen. Premier, when you became the leader of the government on 27 September 2023, you identified housing and Treaty as your priorities. Can I ask what influenced the identification of Treaty as a priority that should be named in what was your very first media interview as Premier?

10

THE HON. JACINTA ALLAN: I wanted to make it very clear in my very first opportunity as Premier in September of last year to make it absolutely clear that I had that ongoing commitment and determination to work with First Peoples to achieve Treaty. It was a time last year where there was much debate about these matters and I wanted to put it absolutely firmly on the public record that my commitment to Treaty was unwavering, and for there also not to be any opportunity for there to be any hint of a doubt, both for First Peoples but also too for people who want to sow seeds of doubt that I was determined to carry forward the work that had been done before me in this role.

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But also recognising at the point in time that I was stepping into the role we were coming into the land justice hearings for this session of Yoorrook and also too we are working towards the Treaty negotiations commencing potentially towards the end of this year. So I recognise that it is a very critical and precious time for truth-telling and Treaty, and I wanted to make it absolutely beyond doubt of my firm commitment to truth-telling and Treaty.

25

MR McAVOY SC: Thank you, Premier. Then in December 2023, following the defeat of the Constitutional referendum question in relation to First Peoples' Voice to Parliament in October 2023 you again, spoke in the following terms. If we could have document number two on the screen, please. You spoke in the following terms:

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"In Victoria we are some ways well ahead of the Voice".

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You said, noting the State this already enacted the Voice and truth aspects of the Uluru Statement of the Heart via the democratically elected First Peoples' Assembly and the Yoorrook Justice Commission, which oversees the State truth-telling process. Now, those comments were recorded in a piece in 'The Guardian' on 9 September 2023. You recall that particular piece?

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THE HON. JACINTA ALLAN: Yes, I do.

MR McAVOY SC: In the shadow of the referendum loss, how important was it for you and your government to maintain the commitment to this process?

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THE HON. JACINTA ALLAN: Again, I wanted to make it clear that we were unwavering, if you like, in terms of continuing on the path that was set prior to the conclusion of the Voice referendum last year. But also I made those comments in the context of having spoken to a number of First Peoples following that referendum
 5 outcome, and I knew that there was a lot of hurt, a lot of concern, and I wanted to make it absolutely clear that despite that result we wanted to continue on the pathway we had already set.

We had already set that pathway, because the evidence tells us that it is the Treaty
 10 pathway that gets better outcomes through listening and telling the truth, which obviously this process is a critically important part of. But working to Treaty and the outcomes of Treaty and having a true self-determined approach for First Peoples was the way to get those better outcomes that we also want to see. It was in that context
 15 at a time where there was a lot of hurt and concern in the community, and some questions and understandable questions that I wanted to make it absolutely clear of our ongoing commitment.

MR McAVOY SC: In that article you also are recorded as having said:

20 "I am not going to come to the table wanting to prejudge the outcomes".

Speaking about the negotiations. That is something that you have repeated in other circumstances, is it not?

25 **THE HON. JACINTA ALLAN:** Correct.

MR McAVOY SC: And can you just explain for the Commissioners the thinking beyond that statement?

30 **THE HON. JACINTA ALLAN:** My thinking behind that statement comes from a fundamental position of wanting to respect the process. We have established a Treaty process. We have established the negotiation framework and arrangements, having a negotiation table where First Peoples sit with government as equals to the process. We have our independent oversight with the Treaty Authority, and I am wanting to
 35 respect that process, not put over the top of that process my own expectations and demands, because that would be entirely inappropriate in my view. My only - the only position I want to make clear is that in terms of being fully supportive of Treaty outcomes, I want to see an outcome. And the timeline and what is contained in that outcome will be determined with those with responsibility and the accountability at
 40 the negotiation table to deliver that.

MR McAVOY SC: Premier, I would just ask you how strongly wedded you are to that position of respecting the negotiation process. Clearly there is the potential for
 45 even from this evidence today, for questions to be put to you about ruling certain things in and out on the negotiation table. Can you make any comment in this regard to the Commissioners?

THE HON. JACINTA ALLAN: I have - I have on many occasions, with all due respects to our friends who might be watching this from the media side of the table, on many occasions I have been asked to rule things in or out in terms of what may be discussed at the Treaty negotiation table and I am simply not going to do that

5 because again, that would be disrespecting the process. It would not be adhering to the - we have empowered our representatives, the First Peoples representatives, the government representatives.

10 We have empowered them with the tools and authority to negotiate on our behalf and I am not going to undermine their work by giving what at times may be seen as very binary answers to questions when I am in - when I am performing other public duties and being asked questions about Treaty. I think that would be deeply disrespectful to those who have the responsibility on our behalf to negotiate the outcome.

15 **MR McAVOY SC:** Thank you. Premier, I might at this stage take the opportunity to show you and those watching the Terms of Reference. If we could see the Terms of Reference for this Commission on the screen, please. Firstly, if we could zoom in on the background. The first three dot points in the background, Premier. Firstly, we all understand the historic nature of this Commission, having been created to investigate

20 the injustices of Victoria's past and the ongoing injustices and we note that other states appear to be following suit. But it is important that we understand the actual Terms of Reference for this Commission. At background, the first three dot points indicate that the First Peoples include the Traditional Owners of the lands currently known as the State of Victoria over which they maintain that their sovereignty was

25 never ceded:

"First Peoples' experience of colonisation have included grave historic wrongs and past and ongoing injustices and intergenerational trauma. The State of Victoria acknowledges both the continuing impacts arising from historical injustice and the

30 ongoing strength and resilience of First Peoples and survival of their living cultures, knowledge and traditions".

So that sets part of the framework. The background goes, but if we could turn now to item 2(a). Thank you. So at part 2 of the Terms of Reference we have the objectives

35 and the objectives of the Commission are said to include - it goes on for a number of subparagraphs, but it is said to include to:

"Establish an official public record based on the First Peoples' experience of Systemic Injustice since the start of colonisation".

40

So that indicates to this Commission and to the world at large that we are to start from the beginning of the impact on First Peoples in this continent. You would agree with that?

45 **THE HON. JACINTA ALLAN:** Yes, I would.

MR McAVOY SC: Then, if we go to objective 2(b). It goes on:

"The objectives of this Commission are to develop a shared understanding among all Victorians of the individual and collective impact of Systemic Injustices and the intergenerational trauma that has flowed from them since the start of colonisation".

5

So it is in creating that shared understanding that we are all seeking to ensure that the evidence allows the appropriate findings. You would agree with that?

THE HON. JACINTA ALLAN: Yes, I would.

10

MR McAVOY SC: If we can go to paragraphs 3(a) subsections (1) to (4). Thank you. So the Terms of Reference of the inquiry are that:

"Having regard to the objectives set out above, and subject to the Inquiries Act 2014, you are appointed to inquire into and report on historical Systemic Injustices perpetrated by the State and Non-State Entities against our First Peoples since the start of colonisation, including but not limited to".

15

I will just take you to the first four of those Premier:

20

"Cultural violations such as breach and denial of First Peoples' law and lore. (2) theft, misappropriation and destruction of cultural knowledge and property. (3) eviction, displacement and dispossession. And (4) massacres, wars, killing and genocide or other acts of similar gravity".

25

So you can see that in commissioning this inquiry to undertake the work that it is doing the government did not shirk some of the difficult issues that are going to be faced in exposing the truth. Do you accept that?

THE HON. JACINTA ALLAN: Yes, I would accept that and it was the only way to get the truth.

30

MR McAVOY SC: If we could then turn to paragraph 3(b)(6), please. So the second part of the Terms of Reference are:

35

"Ongoing Systemic Injustices perpetrated by State Entities and Non-State Entities against First Peoples including but not limited to the areas of and..."

At subparagraph VI:

40

"..any other ongoing Systemic Injustice considered appropriate by the Royal Commission".

So that indicates to this Commission it is fiat is very broad and the important fact is trying to identify the injustices and any injustices that occurred to First Peoples are within its fiat. You would agree with that?

45

THE HON. JACINTA ALLAN: Yes, I would.

MR McAVOY SC: Thank you. Just briefly if we could go to 3(d) and (d). Thank you. 3(d) provides:

5

"How historical and Systemic Injustice can be effectively and fairly acknowledged and redressed in a culturally appropriate way".

10 So this Commission is given the task of dealing with the appropriate redress as a result of those injustices. You'd agree with that?

THE HON. JACINTA ALLAN: Yes, I would.

MR McAVOY SC: And (e):

15

"How ongoing Systemic Injustice can be addressed and, or redressed including economic reforms to existing institutions law, policy and practice in considering how the State of Victoria can be held accountable for addressing these injustices and preventing future injustice".

20

And you accept that that is appropriate for this Commission?

THE HON. JACINTA ALLAN: Yes, I do.

25 **MR McAVOY SC:** Thank you. Now, you will understand, from your briefings we expect, that the evidence before this Commission makes clear and undeniable that First Peoples were murdered in large numbers, that children and women were stolen, raped and tortured, and that this was mostly done so that First Peoples' lands could be taken. You are aware of that from briefings in relation to these hearings?

30

THE HON. JACINTA ALLAN: Yes, I am and I go to some of those examples in my witness statement.

35 **MR McAVOY SC:** And these facts, I put to you, Premier, are facts that are very well-known to First Peoples in this State, but I suggest to you are mostly unknown by non-First Peoples including government officers. Would you agree with that assessment?

THE HON. JACINTA ALLAN: Yes, I would.

40

MR McAVOY SC: Whose responsibility is it then to educate the broader community about these matters?

45 **THE HON. JACINTA ALLAN:** It is absolutely the role for government and the various organisations, and arms of government to be able to tell this version of history. And again, I think Commissioner Lovett made some of these remarks when we were at the Welcoming ceremony outside this morning and Counsel Assisting, as

you have identified through the Terms of Reference for this Commission, a critically important part is making sure the truth is not just told and acknowledged and understood, but having the record written, the accurate, pardon me, the accurate record written, so that we can then have the foundation on which we go forward in understanding the colonisation and what was done in the name of the colony, what was done not in the name of the colony, as well and what impact that has had today.

Because until we understand that and it is not just an academic understanding and I think if I can - if the Commission may, there is the academic understanding and there is much that has been written, much that I have learnt from those reports in preparing for today, but it is making sure that it is understood at across - across the community more broadly. It is about understanding why when they are in local communities why there are concerns about the gold royalties that have not been returned to First Peoples. It is about understanding why rates of child protection removals are higher. It is understanding where that disadvantage started from. And I think Commissioner Bourke talked about that unbroken line of injustice in your opening remarks today.

It is understanding that both at an academic level, but also at a personal level so that that true history of our State can be told and in my personal view not enough of us know that story. Not enough of us know that story and it is - again, in my witness statement I refer to that there is more to do in our education systems to make sure that this truth, this historical truth of the record that will come out of the Yoorrook hearings in the future is told through our - through our education systems going forward.

MR McAVOY SC: Thank you, Premier.

CHAIR: Could I just ask a question? Is there a genuine appetite in education to make contemporary curriculum tell the truth, for example, using materials from this Commission? Because we are getting so much material, so much information about the present and the past and I just wonder if you could see an appetite for this in addition to Treaty, or separate from Treaty as a mainstream thing.

THE HON. JACINTA ALLAN: I most certainly do. And, Commissioner, not wanting to pre-empt or anticipate your own recommendations back to government that you may make on this front, I have just found personally the material that the Commission has put on its website, the video clips that tell the story of the impact of those first settlers around the Portland area. There is a number of really, really informative pieces of information that are already - that you are already providing to the community out of today. It would be wonderful if more people went and sought for themselves this information, but also too I am conscious there is a role for government to enable that, to lead that, to guide people to find out this information and look at how we can embed some of these - not some of it, sorry, to embed the historical record in our education systems.

I am already seeing how our education system today is very different to the one that I went through in terms of what kids at the youngest of age learn about First Peoples'

culture and practice and even conversations at the earliest of years of schooling about land dispossession. We can build on that. The work of this Commission will give us an enormous wealth of material and evidence, and fact that we can then look at how we embed that more broadly into our curriculum.

5

MR McAVOY SC: Thank you, Premier. Again, without pre-empting the findings and recommendations of this Commission -

THE HON. JACINTA ALLAN: Yes.

10

MR McAVOY SC: - there would be a number of ways in which the government could ensure that this information is not only known but embedded in the community and the history of the State is no longer a contested space, which First Peoples have to re-contest every time they wish to campaign for their rights.

15

THE HON. JACINTA ALLAN: Absolutely.

MR McAVOY SC: Premier, I now wish to take you to your statement and paragraph 3 and 4 of that statement. We know that you made these comments also in your opening, but could you please for the Commissioners read paragraph 3 and paragraph 4?

20

THE HON. JACINTA ALLAN:

25 "I acknowledge that sovereignty was never ceded and that the impact of dispossession and colonisation on Aboriginal Peoples is still felt today. I acknowledge the Traditional Owners' spiritual and ancestral ties to their lands and waters can never be extinguished".

30 **MR McAVOY SC:** In relation to paragraph 3 you accept that there has never been a transfer of sovereignty from First Peoples - what is now referred to as Victoria, to the State of Victoria, or its predecessors?

THE HON. JACINTA ALLAN: Yes, I do.

35

MR McAVOY SC: With respect to paragraph 4, you acknowledge Traditional Owners' spiritual and ancestral ties to their lands and waters can never be extinguished. Are you making a distinction as to - as between spiritual ancestral ties and legal ties by the use of that wording?

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THE HON. JACINTA ALLAN: The wording of that paragraph was intended to acknowledge that alongside the impact of dispossession from land and I would include water in that, in terms of the connection of land and water and how it relates to wealth and the transfer of wealth. It was also to acknowledge the spiritual and ancestral ties alongside that as well were not extinguished.

45

MR McAVOY SC: Yes. And you understand, though, that in the laws of most First Peoples around Australia, those spiritual and ancestral ties are the basis, the basis for rights of ownership and possession of their territories. You understand that.

5 **THE HON. JACINTA ALLAN:** Yes, yes, I do.

MR McAVOY SC: And indeed it is those spiritual and ancestral ties which are the foundation upon which continuing Native Title rights and interests are recognised by the common law.

10

THE HON. JACINTA ALLAN: Yes, yes, I do.

MR McAVOY SC: And at paragraph 24 of your statement, Premier, you observe and might I say, you used - you express your pride in the extent of Aboriginal cultural heritage in this State and the fact that there have been some 400 - sorry - 43,000 sites recorded across this state, cultural heritage sites. Can you consider for a moment whether in your mind that there is any doubt that First Peoples have occupied and owned the whole of the State of the Victoria for a very, very long period of time?

20

THE HON. JACINTA ALLAN: Yes, and in acknowledging that sovereignty was not ceded, that is an acknowledgment of that connection.

MR McAVOY SC: There is also - there is also, no doubt, I suggest to you that, over that period of time, First Peoples have exercised a connection of extraordinary spiritual, cultural and ecological depth. Would you agree with that broad proposition?

25

THE HON. JACINTA ALLAN: Yes.

30

MR McAVOY SC: Do you agree the depth of that connection was historically and remains largely ignored or at best misunderstood outside of First Peoples communities?

THE HON. JACINTA ALLAN: Yes. And the engagement the Commission and I had speaks to that and speaks to the importance of making sure that the record out of this process is first embedded in our community's understanding.

35

MR McAVOY SC: Yes, indeed, as one example of many, we had evidence on Friday, 26 April 2024 from a group of four First Peoples; John Clarke, Matthew Shanks, Katherine Mullet and Mick Bourke, speaking about their deep connection to Country exercised through fire management. And I would ask you to accept that those very ancient skills and the knowledge that is relied upon for fire management have been throughout the history of this State at least, dismissed or not valued until very, very recently.

45

THE HON. JACINTA ALLAN: Yes, yes, I would, and I think in terms of your reference to very recently, it has been in, I'd say, recent decades that there has been work particularly around the use of cultural practice in fire management. And fire protection for communities has been something that has been a very important step forward for protecting communities that are in those more fire-prone areas of the state, including the one I live in as well.

MR McAVOY SC: Now, I propose to ask you a few questions about your understanding of the notion of First Peoples' self-determination, but before I do, I might ask whether the Commissioners have any questions in relation to the questions that have been asked so far. Thank you, Commissioners. Premier, at paragraphs 36 to 38 of your statement, you discuss your understanding of self-determination. Particularly, I draw your attention initially to paragraph 36, where you indicate that:

"Self-determination became a key principle of First Peoples' policy in 2015 and then embedded into the commitment to Treaty in 2016".

Is that correct?

THE HON. JACINTA ALLAN: Yes, it is.

MR McAVOY SC: As a result of that commitment to self-determination as a key principle there have been a large number of policies and frameworks, and statements that have been developed in order to come to terms with the notion of self-determination by government. You'd accept that?

THE HON. JACINTA ALLAN: Yes, I would.

MR McAVOY SC: In your view, has the adoption of the policies in relation to self-determination brought about a noticeable effect in government in the way that it deals with First Peoples?

THE HON. JACINTA ALLAN: If I can answer that question in two parts and I am particularly focussing on the use of the word, "noticeable". In answering that in two parts I would say it has made an effect. I would say that we are acknowledging we have quite some way to go and I am grateful for Commissioner Lovett's presentation to a Cabinet meeting last year for ensuring that we had a much better and stronger understanding of the principles of self-determination and how it is not just to talk about them, but how to put them into action and practice. So I would say it has some effect.

I am pausing over the use of the word "noticeable", because I do want to acknowledge that we have quite some way to go. That there are many parts of government that are showing a good understanding and good practice of self-determination and there are others that are making good endeavours but perhaps are not fully - fully acquitting the requirements in terms of understanding to achieve self-determination it is not just consulting. It is making sure it is that transfer of and

sharing of power and resources, and making sure that that is embedded in the work we do.

5 But I would put to the Commission that the very noticeable effect that our framework on self-determination - our policy principle of self-determination sits in our commitment to Treaty. Treaty is very much the embodiment of self-determination and that is perhaps the most notable effect that policy has had on the decisions of government.

10 **MR McAVOY SC:** But it's the case isn't it, Premier, that you are not saying that because the State is moving ahead on Treaty that everything else goes on hold?

15 **THE HON. JACINTA ALLAN:** Absolutely not. Absolutely not and I would be concerned to hear that there was evidence or reports to that effect, because - and I don't want to be stepping into the shoes - into - into - inappropriately into the shoes of First Peoples, but again the references today to 236 years of colonisation have spoken and the time it is taken to get just to this point here in Victoria, in Australia, speaks to the fact that we - it has taken a lot of time to get to this point. And whilst we work through truth-telling and Treaty, we need to make sure that along the way
20 there are, particularly those key areas of government administration that is having an ongoing impact for First Peoples, that we continue to work very hard to embed the practice of self-determination into the work we do.

25 **MR McAVOY SC:** Premier, in fact, the evidence before this Commission has been consistently, consistently disclosing a failure to deliver on the policies, programs, strategies and frameworks that have flowed from the self-determination policy, and it is a matter of particular concern to this Commission as you could imagine, Premier. Are you saying that the lack of performance is not something that has been brought to your attention or is it something that you are aware of?

30 **THE HON. JACINTA ALLAN:** It is. Just to be clear, Commissioners, it is certainly something I am aware of. I have had the opportunity both to watch and read some of the evidence that has already been given to this Commission and I have heard and seen this line of questioning and response. So just to be clear, no, this is
35 not the first time, I am aware that there is a lot more work for government to do in working through embedding the principles of self-determination across the work we do.

40 **MR McAVOY SC:** Clearly, though, the delay or failure to implement plans and strategies and frameworks raises a number of issues, the first for this Commission, which was alluded to by the Chair in her opening marks is the concern that this report, this final report from this Commission will be yet another report that is added to the pile and then not acted upon. What can be said, if anything, to give the Commissioners comfort that that is not going to occur?

45 **THE HON. JACINTA ALLAN:** In answering that, I do speak - I do wish to point too that this is - this - that our truth-telling process that I am participating in today

and government is participating in is part of that Treaty process, that we have set the path towards Treaty that, if I could put it this way, that government can't duck out of its responsibilities to Treaty. We have legislation that requires us to come to the negotiation table. We have a legislative framework. We have the obligation and the personal commitment as well, I want to be clear that it's not - it is not just the legislative requirements that we are undertaking this, it's because the right thing to do.

But we do - I do point to the fact that the work of this Commission is directly, directly related to Treaty negotiations, and that there will be a requirement for government to respond. And I do acknowledge too the Commissioners' concern at the government's response to its previously report, and I say that we understand that concern. We understand - I understand that frustration. I do point to a number of the recommendations require a lot more policy work and thinking of government, because this is - some of the recommendations too do challenge some of the policy positions we already have as a government. It does require us to take time to consider those positions that have been put to us, but ultimately the Treaty process is going to be the one that holds the government to account on recommendations and reports that come through this process.

MR McAVOY SC: There is no legislative obligation to act on the recommendations of this Commission, though, is there?

THE HON. JACINTA ALLAN: There is no specific legislation that goes to the reports of this Commission, other than that they are very - it has been very clearly established as being the - an integral part to Treaty, and again the international evidence shows us that to achieve Treaty, to achieve Treaty that can support better outcomes going forward we can't do that from a position where the clock starts as we sit at the Treaty table. The clock started 236 years ago with the colonisation of this State and that dispossession of land, and understanding that impact that has an ongoing, that dispossession that has an ongoing impact in the disadvantage that we see today.

MR McAVOY SC: You can understand, however, Premier, that amongst the other concerns about the non-performance that has been the subject of evidence in this Commission, that the Commissioners might properly be worried about whether the State and the agencies of the State can make the shift in culture that is necessary to fully embrace the notions of self-determination. You understand those concerns?

THE HON. JACINTA ALLAN: I - I most - I most certainly do. And as we have - this has been referenced this morning. Other Ministers, other representatives of government who have been before this Commission, before me, I think it demonstrates that this will, to bring about this change will require deep cultural change within - within government, both our own practices and structures, and how we go about the business of forming policy and developing policy, and having our own deliberations. But also too it will also challenge and, Counsel Assisting, you

went to this earlier, some of the views of people in our - in our - in our government systems as well.

5 So this is deep - this work will be deeply challenging and complex to turn around, but Treaty - again, coming back to the central importance of Treaty as requiring that change, demanding that change. That we have to work - we have to acknowledge that it is hard, it is going to be complex but we have to push on. We have to push through these complexities. We have to work our way through and a large part of that sits with our negotiators at the negotiation table. But I also am deeply aware of
10 the requirement for government to also work through its own challenges in being able to come to working through these issues in a very different way to what we do at the moment.

MR McAVOY SC: Many First Peoples who have given evidence have, to this
15 Commission, have expressed the view that what they see occurring or not occurring today in their view is just a continuation of that which has happened in the past. Premier, have you heard the expression, "another day in the colony"?

THE HON. JACINTA ALLAN: Yes.
20

MR McAVOY SC: You understand what that expression means.

THE HON. JACINTA ALLAN: I have my understanding, but it would be -

MR McAVOY SC: Perhaps you could share that understanding with the
25 Commissioners.

THE HON. JACINTA ALLAN: It goes to, I believe, what the Commissioners -
30 Commissioner Bourke said earlier. Sorry. It might have been Commissioner Lovett talked about crumbs from the table. Commissioner Bourke talked about another report. It is - it is another way of describing business as usual, another day in the colony is business as usual. The government goes about its business and the ongoing dispossession and injustice for First Peoples continues. And this is why Treaty is again - I appreciate I have mentioned this a few times before this morning - this
35 afternoon, it is so deeply important to bring about that change.

MR McAVOY SC: You might be required to say it a few more times today, Premier
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THE HON. JACINTA ALLAN: I think so.
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MR McAVOY SC: - before we finish. Do you accept and I put this without wishing to be overly dramatic about it, Premier, but do you accept that a shared
45 understanding of self-determination for First Peoples in Victoria is a matter of survival? Do you accept that proposition?

THE HON. JACINTA ALLAN: Yes, I would.

5 **MR McAVOY SC:** By that proposition, Premier, it is meant to say that First People, First Peoples in Victoria often exist in circumstances where - well, they do exist in circumstances in Victoria where they are not the dominant culture. They have little or no power at the voting box and they have little other influence and are generally subjected to the whim of government and have been so since the beginning of the colony. Do you accept that broad description?

10 **THE HON. JACINTA ALLAN:** Yes, yes, I would.

MR McAVOY SC: How then do First Peoples get past a self-determination that is understood by government, as it appears to the Commission from many of the witnesses, that is understood by government as something that government can measure and control, and design programs for?

15 **THE HON. JACINTA ALLAN:** Well - well, in my view that would not be consistent with the principles of self-determination. It would not be consistent with wanting to truly bring about change through Treaty process. The understanding that self-determination - again as I understand it, the true principles of self-determination it is not for government to go away and do its own business, and there will be a consultation here and there. It is about making sure that it is about transferring decision making and power, the ultimate embodiment of that is Treaty. So I would - I would say back to you, Counsel Assisting, that that - it is - the self-determined framework that we have is not one that is determined by government. It is informed by the principles of self-determination and the advice of First Peoples in setting that policy framework.

20 **MR McAVOY SC:** And so Victoria as a State, including its government agencies, I suggest to you, if they are to fully embrace the principles of self-determination must get to a point where those principles are recognised as embedded rights within the culture and work of government on a day-to-day basis. Do you accept that?

25 **THE HON. JACINTA ALLAN:** Yes, yes, I would.

30 **MR McAVOY SC:** And so on 26 April 2024, which is last Friday, Professor John Borrows from the University of Toronto, an expert in First Peoples self-determination observed that:

35 "Government and community can be brought to a better understanding of self-determination through truth-telling processes such as this process".

40 That was his evidence and he spoke about similar processes in Canada, which had had a positive effect in raising the understanding of self-determination. Clearly from your evidence thus far you have hopes and expectations that this particular truth-telling process will have that type of effect for the community and government here in Victoria?

THE HON. JACINTA ALLAN: Yes, I do.

MR McAVOY SC: Is it the case that the government understands that there may be - it may be appropriate for there to be further truth-telling processes undertaken at a
5 more local or regional level to take these - this level of understanding out into the community?

THE HON. JACINTA ALLAN: Yes, yes, it is, and if my memory serves me correctly when I had the opportunity to meet with the Commissioners earlier this
10 year we had a discussion along this line. Again, I am not wanting to cut across any future advice from this Commission, but - and I also think it goes - it is referenced in the Terms of Reference for the work of this Commission, to contemplate future and ongoing truth-telling, but I will seek and await the advice from the Commission on that matter.

MR McAVOY SC: Thank you. I just want to turn now to some questions in relation to your visit to Coranderrk. You went to Coranderrk on Tuesday, 23 April 2023 and you spoke about that visit in your opening remarks this morning. You have also
15 discussed Coranderrk in your statement at paragraph 40. If we could see that on the screen, please. You characterise in your statement the:

"1881 Parliamentary Inquiry into Coranderrk as a form of truth-telling".

But at paragraph 45 you then note that:

25 "Coranderrk was eventually created as a permanent reserve in 1884 only for the State to then pass the Aborigines Protection Act of 1886".

30 Premier, this process of giving with one hand and taking away with the other is emblematic of First Peoples in this State and in other places, indeed, being political footballs at the whim of government. Would you agree with that?

THE HON. JACINTA ALLAN: Without - yes, yes, I would.

35 **MR McAVOY SC:** And that it is your understanding from reading your statement that it is - there is some significant hope that the entry into a Treaty or Treaties in this State will somehow protect First Peoples against the constant changing of political ideologies that occurs with the change of government.

40 **THE HON. JACINTA ALLAN:** It is certainly -

MR McAVOY SC: Indeed, the change of Minister.

45 **THE HON. JACINTA ALLAN:** That is certainly my aspiration both through this truth-telling process and Treaty negotiations.

MR McAVOY SC: In evidence, Premier, given by the Victorian Surveyor-General in relation to Coranderrk, there was a presentation of a series of PowerPoint slides from which it is plain that there were various attacks on the reserve in terms of attempts by non-First Peoples to close the reserve and to obtain the land on which the reserve sat. And that those - those attacks, those raids on the lands of the Aboriginal people at Coranderrk, when viewed over time in the way presented in the PowerPoint presentation, showed that this - this desire and attack on their lands was relentless. It happened year upon year, over decades and decades. And it demonstrates when one looks closely at it, a degree of insatiability on behalf of the non-First Peoples who were seeking to get the lands of the people at Coranderrk. Do you have sufficient understanding of the history of Coranderrk to comment upon that proposition?

THE HON. JACINTA ALLAN: Perhaps in answering that question I would go to the broader theme of land and water that this set of hearings is part of and it does speak to the connection that - of land to wealth, and that the white settlers came with a particular view, that the possession of land brought with it wealth. And what we have also seen conversely that the dispossession of that land and the loss of that intergenerational connection to land hasn't just had an impact on First Peoples' culture and connection to Country, it is also had that intergenerational impact of economic disadvantage that comes from not being connected to your land.

MR McAVOY SC: The material shown by the Victorian Surveyor-General that piece by piece, the Coranderrk land was reduced in size to allow other people to take that for their own, including soldier settlements. You have already discussed that, as have the Commissioners. But you would agree that it is a bitter irony that not only was the size of the reserve reduced but it was reduced in order to provide land to a soldier settlement scheme to which First Peoples returned servicemen were denied access. You would agree with that?

THE HON. JACINTA ALLAN: I agree and I agree that it is shockingly wrong and unfair.

MR McAVOY SC: As I put to you a moment ago, the dismantling of Coranderrk discloses an - discloses a relentless and insatiable demand for land, but it is not simply the fact that non-First Peoples, Victorian people were relentless in their desire for the land of the First Peoples at Coranderrk. The facts of that dissection of those lands also speaks to government facilitation of that dispossession. So even though there were individuals pursuing those pieces of land, it was the government whose hand actually facilitated or made the order for the - for the cutting up and sale of those lands. Do you accept that?

THE HON. JACINTA ALLAN: Yes, yes, I would.

MR McAVOY SC: And the process of facilitating the dispossession of First Peoples in order to provide land to the British and then Australian people has been a part of this State ever since the first arrival of the Surveyor-General and the Lieutenant

General at Port Phillip Bay and the creation of the Port Phillip settlement. Would you agree with that?

THE HON. JACINTA ALLAN: Yes.

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MR McAVOY SC: I want to take you to paragraphs 81 to 86 of your statement. If you could just turn there, please. At those paragraphs you outline some of the observations made about First Peoples in Victoria in the period, 1830 to 1840. Do you accept, Premier, that by the time of that colonisation in the 1830s, particularly following the Bourke proclamation in 1835, the British government and, indeed, their appointees in the colonial government in New South Wales, the governor and the Legislative Council, they were all very aware of the likely outcome of colonisation for First Peoples, and I put that to you on the basis that they had been involved in the expansion of Sydney into the 19 counties at the expense of Aboriginal people there and the horror, the absolute horror of what occurred to people in Tasmania in the period 1800 to 1820. So they knew, they knew that - that fatal and broad-spread death would follow from their opening up of the Port Phillip Bay settlement. Do you accept that?

20 **THE HON. JACINTA ALLAN:** Yes.

MR McAVOY SC: I put this to you because they are matters of public knowledge, and I understand, Commissioners, that the Premier is not a historian. You are not a constitutional lawyer are you either, Premier?

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THE HON. JACINTA ALLAN: No, no, there is only a few of us who have that opportunity.

MR McAVOY SC: So you accept, though, that it is a matter of public knowledge and within your knowledge that this - this consequence of the invasion and occupation of the lands of First Peoples was also known about because of what had occurred in North America in what is now known as the United States and in Canada and the West Indies and South Africa. It was not a new phenomenon.

35 **THE HON. JACINTA ALLAN:** No, no, it most certainly was not, and it appears that the British government at the time appeared to understand that, which is why from again, my reading of history on this, and in preparation for today, why there were grave concerns about what was happening in the then colonies of the time.

40 **MR McAVOY SC:** You will be comforted to know, Premier, that the historian experts who have given evidence agree with your view. Knowing that death, dispossession and all that entails, would follow from the occupation of First Peoples' lands in what is now Victoria, I suggest that that places a particularly heavy moral and legal duty on those involved at the time to protect those - those peoples.

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THE HON. JACINTA ALLAN: I would - I would agree with that suggestion, and it is - to me it is unfathomable as to why it wasn't that - what - that path was taken.

MR McAVOY SC: And, indeed, there is some very heavy moral and legal duty that now passes to this government and successive governments to ensure that - that you do whatever is reasonably possible to ensure that there is some restitution made for
5 the terrible offences against First Peoples in this place.

THE HON. JACINTA ALLAN: Yes, yes. I am deeply, deeply aware of that. I think Counsel Assisting, as you put them, I think you said the moral and legal duty that passes on to those of us who, today represent the government and the institutions
10 that make up the State of Victoria, and the responsibility we have, given the past practices and decisions of those at the time.

MR McAVOY SC: Indeed, Premier, at paragraph 67, first line you note that you found:
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"The evidence of the way in which First Peoples were dispossessed from this place distressing".

Can you explain to the Commissioners how it is that in particular you found it
20 distressing? Was it distressing as a government officer, distressing as a parent, distressing as a human? What was the basis for your distress?

THE HON. JACINTA ALLAN: My distress - my distress came from all of those, but most particularly as a human. As I have said in my witness statement and on
25 previous occasions much - I have learnt much that I did not know in terms of the true history of the dispossession, what the settlers, the colonisers did when they came to Victoria. I did not know of the massacres, I am ashamed to say. I did not - I have learnt about the size and scale of the murders and the massacres through my preparation for my appearance today. And I remember a few weeks ago now, as I
30 was preparing my - the materials for my witness statement and I was - I have mentioned a few times I live on Dja Dja Wurrung Country and it is beautiful Country and I live in an area that is surrounded by the bush.

And I was sitting there in my backyard, reading through the materials, and just felt so
35 distressed that these were massacres that occurred not far from where I was sitting and I didn't know about them. Growing up and living as I have all my life in Central Victoria on Dja Dja Wurrung Country I did not know about the massacres that occurred so close to home and that is what - that distress carries with me today. It brings me a sense of shame and distress personally that I did not know that, and it
40 brings me a sense of shame and distress that this was done - this was done by people taking - all in the pursuit of taking land off First Peoples. And as an extension of that, Counsel Assisting, to know that the consequence of that was the impact of death and dispossession for First Peoples going forward.

MR McAVOY SC: Premier, if you could turn to paragraph 99 of your statement. In that paragraph you say:
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"I recognise that the frontier period from the 1830s to the early 1850s was a period of conflict in which violence was widespread. This included First Peoples' resistance to settler encroachments on their land, in the form of taking sheep and sometimes killing settlers as well as settlers and colonial authorities killing First Peoples."

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Putting that in your statement, those words in your statement, you are not seeking to diminish or in any way discount the fact that the overwhelming result of the invasion of First Peoples' lands was the death of First Peoples. Are you not seeking to walk away from that?

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THE HON. JACINTA ALLAN: Most certainly not. Most certainly not.

MR McAVOY SC: It seems worded as it is that it is put by way of some explanation for the reprisals that Aboriginal people were taking settlers sheep and they were sometimes killing settlers and, therefore, was a bit of to and fro. Is that what you intended to convey?

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THE HON. JACINTA ALLAN: No, Counsel assisting, it most certainly is not. It was an attempt and perhaps a clumsily worded attempt to tell the truth, tell the history what have occurred at the time. As I say in that - at the end of that paragraph:

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"Many more First Peoples were killed than settlers".

What I was endeavouring to present was the conflict and the consequence of conflict. I absolutely acknowledge that First Peoples did not invite or did not want this conflict and the response of First Peoples was one that at a time of - and again I think, Commissioner Lovett, you might have mentioned this in terms of or Commissioner Bourke referring to the noise of gunshots, they'd never heard that before. And so I - please, I do not wish this to be seen as being anything other than an acknowledgement that there was conflict at the time and that the conflict was centred on settlers seeking to dispose First Peoples off their land.

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MR McAVOY SC: Could I ask you to turn to paragraph 81 of your statement please, Premier? At that paragraph you say:

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"Employees of the British government reported numbers..."

Paraphrase:

"...reported numbers and the best ways to protect them, First Peoples, from the violence of colonisation".

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THE HON. JACINTA ALLAN: Sorry, Counsel Assisting, can you confirm the paragraph you're referring to?

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MR McAVOY SC: 81.

THE HON. JACINTA ALLAN: Yes, thank you.

MR McAVOY SC: So it starts:

5 "In the 1830s and 1840s, employees of the British government observed numerous Aboriginal groups across the region and reported to authorities to build a picture of their numbers, languages, practice, areas of occupation and ways of best protecting them from the violence of colonisation".

10 The first observation about that paragraph is that the British government knew that Aboriginal people had areas of occupation and that people were not wandering in a nomadic fashion over vast distances across the landscape, as was used to perpetrate the myth of terra nullius. You accept that?

15 **THE HON. JACINTA ALLAN:** Yes, I do. And I think further on in my witness statement at paragraph 85 refers to the Ash Hills as evidence that there was an ongoing connection to that land.

20 **MR McAVOY SC:** The second observation I will make and I suspect it is a matter that requires only some clarification from you, but the reference to employees of the British government observing numerous Aboriginal groups is, I suspect, an attempt to be accurate and not an attempt to distance this Victorian Government from their activities that were undertaken in the 1830s and 1840s?

25 **THE HON. JACINTA ALLAN:** Correct.

MR McAVOY SC: The Victorian Government accepts responsibility for that period?

30 **THE HON. JACINTA ALLAN:** Yes, insofar as the continuance of the State, obviously that period that my statement refers to goes back to when it was the colony out of New South Wales, but I am not - I am agreeing with your statement of ongoing responsibility.

35 **MR McAVOY SC:** And, indeed, the State of Victoria has received many, many times over the benefits of that - of that process of dispossession, has it not?

THE HON. JACINTA ALLAN: Yes, it has.

40 **MR McAVOY SC:** Commissioners, there is one more question that I have got for the Premier on this particular topic. I can then launch into a new topic or we could take a lunch break. I am suggesting that the lunch break be kept to a period of 30 minutes to accommodate finishing the whole of the Premier's evidence. I am in your hands, Commissioners, as to whether you wish for me to continue on after this
45 question or that we break shortly.

CHAIR: Yes, a break shortly.

MR McAVOY SC: Thank you, Commissioner. Now, Premier, I am noting again that you are not a historian by trade.

5 **THE HON. JACINTA ALLAN:** No.

MR McAVOY SC: One of the chief difficulties in developing an accurate historical record I suggest to you is the inability for the First Peoples to gain access to the various archives in Australia and in Britain. Will the State, if requested by Yoorrook
10 or, indeed, the First Peoples' Assembly of Victoria, work with those groups to obtain access to all the relevant colonial records including those held in royal archives and the records of the Royal Marines and the British Navy and the colonial offices?

THE HON. JACINTA ALLAN: Should the Commission provide recommendations
15 to that effect, we would absolutely work with the Commission and relevant agencies, and it is consistent with the approach the government has taken in some other areas on this front, absolutely. Noting, I am sure, Counsel Assisting, you'd note this as well that the historical record will tell one - will not necessarily always be the First
20 Peoples' version of what occurred at the time. There were some observations made earlier about who writes the record of history, and that being those who have the power at the time, but absolutely acknowledging the importance of these documents to continuing to understand the true history of the - and the impact of colonisation on this state, then, yes, we should absolutely have access to those materials.

MR McAVOY SC: I can share with you, Premier, an understanding of what some of
25 the difficulties are in relation to the historical documentary record. In this country there was an asserted occupation of Port Jackson of the penal colony by the British and the original document can't be found. The original instructions and drafting instructions and Commission of Governor Bourke who issued the Bourke
30 Proclamation can't be found and there are a whole string of very important documents, which set out the history and the formation of this particular colony that are missing in - from the records of a people who are renowned for their record keeping. And so it is not a request made in slight terms that the government take on
35 this role of pursuing the gathering in of those important documents, and so the question was put in that context. Does that make the question clearer, Premier?

THE HON. JACINTA ALLAN: Yes, it was - it was previously clear, but, yes.

MR McAVOY SC: Thank you. It might be an appropriate time now to take the
40 break unless Commissioner have questions about the topics that have just been covered.

COMMISSIONER HUNTER: Can I just ask one question, Premier? You have
45 mentioned a few times in your statement or speaking in preparing for your statement, that you found it distressing, but also the history. And in line with, I guess, Commissioner, the Chair, Bourke's question earlier, do you think it's okay that this -

later in life finding out this history, not too late, I might add, but finding out the history of this State that late, that that is okay?

THE HON. JACINTA ALLAN: No, no, it is not, Commissioner Hunter. In terms of obviously I had a knowledge that many would have in our community of colonisation and how the State and the nation was - was affirmed. I have a broader view that there is not enough broader understanding of our political and parliamentary, and our history anyway. But going to the question of the history of First Peoples and the dispossession, as I have said earlier, the understanding of the violence, particularly was not one. And I had a sense of it, I had a knowledge of it, but not how widespread it was, not - and particularly to the, coming from Central Victoria, the - my knowledge of what happened around Portland was - was - has been deepened by preparing for this witness statement today. And I reflect on the greater depth of understanding I have now and how that benefits me as a person, let alone in my role as Premier and a member of Parliament, I think we can all benefit from understanding that history.

COMMISSIONER WALTER: Premier, going back to the earlier topic of the many strategies and frameworks and we have literally seen dozens and dozens of these concerning First Peoples, all of them full of laudable and lauded commitments and obligations, but none of them to my knowledge that we have seen here have actually delivered on those. When you talk about a change of culture in the public service, how will that happen if there are no consequences and there does not appear to be for any of these, consequences for failure to deliver those commitments?

THE HON. JACINTA ALLAN: I mean, Commissioner, I think that speaks to why Treaty is so important because the practice to date clearly has not delivered against the outcomes - has not delivered and has not changed the outcomes we are endeavouring to change. The reason for that can be in how those frameworks were put together. If they had not had those principles of a self-determined approach then they are not going to have as much success as others would. I think there has been some areas where we have made improvements in some of the Aboriginal-controlled health and housing organisations is an area I would point to, but it does demonstrate that we need to do so much more in both changing our practices within government, as we deliver Treaty with First Peoples.

COMMISSIONER NORTH: Can I just ask a question following on from that one? And, Premier, you might like to answer this after lunch, because I think it is one of the two issues that has really troubled me in sitting here now for a number of weeks in the land injustice part of the inquiry. There has been a really sad history of government policies being promoted and then not actioned, and your evidence seems to suggest that the answer to that history is Treaty.

My question is this that if Treaty is the answer it means that there have been some assumptions made about what the reasons were for the failure to date that we have heard about and I just - for instance, for illustration purposes, Water is Life in the water space or the First Principles Review, where principles of self-determination are

set out in the policies. And what is it that caused those policies which are now either expired or nearly expired, not to have delivered, because until we know the answer to that we don't really know the answer to why something else, namely Treaty, should succeed.

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And I am really struggling, I have over these weeks, to understand what has caused this position to arise. There have been some hints in the evidence, but I don't want to put you on the spot immediately because I really would - I would really like some guidance about the sorts of things that have caused those failures, which will be mended by Treaty.

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THE HON. JACINTA ALLAN: Commissioner North -

COMMISSIONER NORTH: I will leave that to you. I am sorry if I have made your lunch a miserable exercise.

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THE HON. JACINTA ALLAN: No. No. I welcome the opportunity to reflect on that over the break and will return.

COMMISSIONER NORTH: Yes, thank you.

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COMMISSIONER LOVETT: Just in line with that, can you articulate here what is the government - so community are getting ready, the First Peoples' Assembly have spoken about this readiness to negotiate Treaty. What is the government - but more importantly, the bureaucracy doing to get Treaty ready on their behalf? They've got to come a long way. We have identified through the lack of implementation of the Victorian Aboriginal Affairs Framework and the self-determination reform framework. So I'd like to understand what is happening from your government, but also (indistinct) -

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THE HON. JACINTA ALLAN: (Indistinct).

MR McAVOY SC: If perhaps 1.55, Chair?

CHAIR: Yes, we will adjourn until 1.55, thank you.

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MR McAVOY SC: If it please the Commission.

CHAIR: That was right, wasn't it? 1.55, yes.

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<THE HEARING ADJOURNED AT 1.26 PM.

THE HEARING RESUMED AT 2.04 PM

CHAIR: (Indistinct).

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MR McAVOY SC: May it please the Commission, we are resuming with evidence from the Premier. Before the lunch break, Commissioner North put a question to the Premier on notice for her consideration over the lunch break. I might invite the Premier now to respond to Commissioner North's question.

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THE HON. JACINTA ALLAN: Thank you. Counsel Assisting, and also, Commissioner Lovett as well, would you like me to do those together or follow sequentially? Okay. Thank you. So, Commissioner North, you did give us quite a lot to think about over the break, and it is a really important question because it goes to the - goes to the heart of why we are here. It is about - we want to get better outcomes. We need to do things differently and we need to understand how, through this truth-telling process what has caused this disadvantage and disconnection as a result of the dispossession of land, and also how the current - what has been tried for decades now hasn't worked and how we need to do better and do differently and I think in the context of your question around the work of government and you have mentioned the frameworks, many frameworks and previous Commissioners have mentioned this as well. There have been many and I feel that that speaks to - there has been a lot of best endeavours, a lot of good intent but that good intent hasn't necessarily been - had the right practices of particularly self-determination embedded in them.

An area of good practice or a good example has been in the area of Aboriginal housing and where we have seen the transfer of housing and resources to Aboriginal Housing Victoria, but I acknowledge that is one example. We need, many more. In terms of going forward, to answer your question about what is different, particularly to what is going to be different is that the embedding of the principles of self-determination in our approach. Because previously governments, different agencies and different organisations have come to these issues from a deficit perspective, not an empowering perspective and this is what is fundamentally different about Treaty process. But also what is different in terms of our work on Treaty is that it is legislated. It is law. It is law that we sit down and negotiate Treaty.

It is law that we have the independent umpire, the Treaty Authority that sits over the work of the parties to the negotiation and they hold the power. They will be holding the parties accountable, so there is - what is different going forward is that the framework we have in place, the Treaty framework has - it is enforceable. There is accountability, particularly on government, and that it is negotiation that has both parties sitting at the table as equal again, with the Treaty Authority as the independent umpire sitting over the top of the work that they do.

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And also too what is very different and very important as part of this, is the First Peoples - who come - Assembly, who come to the negotiating table, they are an elected body in their own right, and with - it was, I think, really a sign of the commitment from First Peoples here in Victoria about their commitment to being involved in the process, that with the second election of the First Peoples' Assembly we saw more people - more First Peoples participate in that election than the first one. So we have an entirely different approach that is driven by those principles of

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equality, accountability and enforceability and that they are required of the government by law.

5 So I acknowledge that there is some way to go as we work through Treaty negotiations but I hope that gives you a sense that - pardon me - that the government has recognised that past practice has not worked, that we need to do better, we need to do differently and that has also been acknowledged through the recent report of the Productivity Commission into the Closing the Gap - the Closing the Gap measures, where it says very clearly that business as usual has not worked, it is not
10 working. It speaks to the need to do things differently and it points to the work that we are doing here in Victoria. So I appreciate that there is still a journey ahead to get these better outcomes, but in terms of what is being done differently to get there I hope that answers the question for you in terms of how we are doing things differently, we are determined to do things differently and we have legislative
15 requirements to do so.

MR McAVOY SC: Before you move on to Commissioner Lovett's question, Premier, I might just test a number of matters with you.

20 **THE HON. JACINTA ALLAN:** Yes.

MR McAVOY SC: You have said in the Treaty negotiation process that, of course, nothing is off the table. But one of the, or two of the measures that have come up in the evidence as potential ways to ensure that the compliance of the administrative
25 government to these policies and plans is by ensuring that the executive officer or the Secretary of each Department has a contractual responsibility to deliver on the self-determination outcomes and that First Peoples are part of the monitoring and evaluation of performance against those contractual provisions.

30 So that if a - if a departmental Secretary-General is overseeing an agency that is not performing then they are answerable to the First Peoples who ought to be beneficiaries of that particular strategy or plan, or project. And so I am expecting that you will say that, of course, that type of outcome is not ruled out. Is there anything
35 that is in place at present that resembles that sort of monitoring and performance measurement in a way that the First Peoples of Victoria get to have a say about that level of government management?

THE HON. JACINTA ALLAN: Counsel Assisting is correct. I will remain disciplined and not cut across the Treaty negotiations, and give a view about what I
40 think should and shouldn't be discussed at that table, other than to note that those recommendations and suggestions are there and I note and acknowledge them, and that they can be part of that process.

45 In terms of the second part of your question, if I can just clarify, Counsel Assisting, when you refer to the accountabilities of secretaries and senior public servants around their performance, did you also mean in terms of your question was about

First Peoples' involvement until monitoring that? Can I just clarify that was your question?

5 **MR McAVOY SC:** Yes, yes. So what role does the Assembly or other community organisations or - have in the oversight of performance at the present time by those executive level officers?

10 **THE HON. JACINTA ALLAN:** So to my understanding I don't believe there is a formal mechanism for First Peoples' Assembly to be involved in the monitoring and oversight of Department Secretaries' performance. That responsibility sits with me as the employer of departmental Secretaries and there are regular performance reviews of Secretaries that assess them as to how they are acquitting their responsibilities across a whole range of indicators, but particularly around implementing the government policies and directions of the day.

15 I will reflect on that question and how it intersects with the current arrangements before we get to Treaty process, because if you consider the government has a policy framework of embedding self-determination in our work that may be something I should consider, embedding in Secretaries' performance measurements. I will take that one on notice, Counsel Assisting. I think it is a thoughtful observation that has been made. But in terms of how it intersects, those formal mechanisms intersect with recommendations that might come out of Treaty, I will not cut across those negotiations as I have said previously.

25 **MR McAVOY SC:** Thank you, very much Premier. If you could now turn your mind to Commissioner Lovett's question.

30 **THE HON. JACINTA ALLAN:** And Commissioner Lovett's question, your question, indeed, goes to - it is a similar vein to Counsel Assisting's question around how - how are we going to be ready, how are the government and the bureaucracy going to be ready. There is a lot of thought and work going in by the First Peoples' Assembly and the work that is happening right now in talking to groups across the - across the state on Country, having conversations about how First Peoples can be ready to come to the negotiating table from their perspective. Equally too
35 government has to do its work in being ready to come to the table.

40 And at the conclusion of this conversation, Commissioner Lovett, I am happy to provide further written advice as to some of the processes, because there is two answers to this, one is a process question and one is how is government culturally ready to come to the table. In terms of the - there is processes in place around - we have, government endorsed in late last year, in December of last year, the whole of Victorian Government Treaty negotiation model, and that includes the rules of Treaty-making that have been agreed between government and the First Peoples' Assembly. We have Cabinet committee and interdepartmental structures to support
45 the work of the - the work of government and we have put additional resources into every Department to help them to be prepared to do their preparations as part of their

work for - to be ready for Treaty negotiations. That is the mechanics then there are also the cultural requirements on how we are culturally ready.

5 There is, going back to that previous question, there are requirements for secretaries to be responsible for oversighting within each of their departments. Not just the process and the mechanics of being ready to come to the Treaty negotiation table, but also to bring the policy and the work and the responses for government. But also too, Commissioner Lovett, if I could put it that way. I think the Treaty process is going to flush out which bits of government are ready and which bits might need some further
10 work and support to be ready to participate in Treaty processes.

As we just discussed there is a lot of good work, a lot of good intent, a lot of best endeavours and some parts of government have - have gone a bit further than others. So I think the Treaty process is going to be important to help lift all parts of
15 government to be both ready from a process point of view, from a cultural point of view, from a policy point of view. If I can go back to the example I used earlier, when you came and presented to Cabinet and led a discussion around understanding what self – what self-determination really meant in action, as I understand it, it came as a consequence of there being a view it wasn't as well understood across
20 government than it should have been.

And that certainly assisted - that conversation certainly assisted all Ministers to then go back to their Departments to have those conversations. I see Treaty doing something similar on a much broader canvas across government and then there is, of
25 course, those accountability measures that I spoke of earlier, both legislated accountability measures, accountability measures that will be enforced by the Treaty Authority, the independent umpire and then accountability measures that myself and my Cabinet colleagues will be driving with their senior Department officials. Because it is our expectation that this government policy, and it is our determination
30 that this government policy, be delivered.

MR McAVOY SC: Thank you, Commissioners. Premier, with other witnesses when we have discussed this topic there have been questions, particularly from
35 Commissioner Hunter, regarding the existence or otherwise of consequences for non-performance and I am wondering whether you can identify what consequences there are for government agencies who fail to perform in terms of their self-determination programs.

THE HON. JACINTA ALLAN: So, outside of the existing consequences, the
40 existing accountability requirements that sit on Secretaries and senior Department executives again, there is none that I am aware of that go directly to - that relate to implementing government policy as it relates to Treaty and Treaty outcomes. It is something that I will reflect on following today's hearings, because I think it does go to, again, the questions from Counsel Assisting are around what are the
45 accountability measures and what - where is the opportunity for First Peoples to have a role in that. So if I may take that one on notice and give that some further thought

because again, if we are, as we discussed this is about doing things differently and driving change we need to consider how we hold ourselves accountable as well.

5 **MR McAVOY SC:** Thank you, Premier. Is there any follow on from that that you wish to make, Commissioner Hunter.

10 **COMMISSIONER HUNTER:** I think there's just something I thought about a bit earlier, before we went to the break and, you know, we talk about these policies and these practices, while we are sitting here there is a Coronial inquest of Heather Calgaret. She couldn't wait. So she couldn't wait for some of these to change now, these harms that are happening now. Totally get Treaty, all of that, and we have spoken about that. But what happens for those harms that are happening right now, what are those mechanisms, these things happening now?

15 **THE HON. JACINTA ALLAN:** Look, I do acknowledge, Commissioner Hunter, as acknowledging, yes, there is a Coronial inquiry being held right now in parallel. That is not lost on me in terms of both the loss associated with that hearing, but also too your observations that action is needed now. And it goes to the discussion we are having, there are actions being taken across government in a range of different areas.
20 And again, I acknowledged earlier in some of those areas they don't go far enough and they don't go far enough fast enough. I reaffirm it is my commitment, the government's commitment to change the way we operate as a government when it comes to working with First Peoples on how we make decisions that affect your lives, because we know you get better outcomes and that is driving the Treaty
25 process.

30 **COMMISSIONER HUNTER:** And that's all good and well, and we know Treaty will take a while. But it is those harms that are happening now is really important, because people are dying and families are being ripped apart. You know, it is not just felt by one family, it is a ripple effect throughout our community and I just want government to reflect on that, about what it is. And the Assembly is already there, and some of this stuff can't wait and maybe that is negotiation with them now around those - those, I guess, policies or procedures that need to happen urgently.

35 **THE HON. JACINTA ALLAN:** I do acknowledge that and if I could acknowledge that statement, Commissioner Hunter, and again, reflect on it. There are already, and I know you have heard from other Ministers, the Minister for Child Protection, for example, and I know this is an area you have also particularly focused on, where we are, as a result of significant amount of work that was First Peoples-led a year or
40 more ago - is bringing about change to that critically important area of supporting and protecting children and families, and there is change coming about in that area. I mentioned the Aboriginal housing example.

45 There are - there is work that is ongoing, and the fact that these hearings are being held in a very public way, in a very importantly truthful way, I know from discussions with officials that this is already requiring a change in thinking about existing practices. So, yes, it is correct to say there are two - it is correct to say, I

won't cut across what is going to be discussed at the Treaty negotiation table, but what we are discussing here today is already having an impact in terms of people who are working with Aboriginal-controlled organisations or working with First Peoples families about how we need to continue to be better now.

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COMMISSIONER NORTH: Can I just highlight particularly what Commissioner Hunter has raised? She has drawn attention to the dramatic cases of where a death is involved, but - and this is the second thing that I had in mind to raise with you, because it is the other matter that has become so clear in the hearings to me, and that is that the overall life of very many, if not most Indigenous people, is affected by a feeling of exclusion, a feeling of rejection. We have come across it time and time again. Ordinary Indigenous Victorians who just feel as a background to their whole life that they are second class, they are not listened to, they are pushed aside and, of course, that is not dramatic. That doesn't get into the Coroner's Court.

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But I just wondered whether you accepted that that makes it really important for changes to happen quickly, and in many instances prior to Treaty negotiations. Because I fear that Treaty negotiations, they are going to be very complex and they are going to take a long time, but ordinary members of the Indigenous community need some reassurance to feel accepted and feel that things are moving in the right direction. And I wonder if you have a reaction to that?

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THE HON. JACINTA ALLAN: Commissioner, as you were raising your question, I was reflecting on the Welcome to Country from Andrew Gardiner earlier and how he spoke to - he spoke to those feelings of First Peoples again, because of the way the State was settled, colonised, because of that - that disconnection and dispossession of land those - that that continues today to result in - and apologies if I am paraphrasing incorrectly, but that the consequence today of marginalisation, of racism, ongoing racism that continues to be experienced, that marginalisation that you spoke of.

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So whilst you were asking your question I was reflecting on how that was, today's Welcome to Country was, in part, framed around that ongoing - that ongoing impact on First Peoples in Victoria. And so again, in answering about taking action quickly that is why there is work continuing across government in those, across a whole range of different portfolio areas, some of which I touched on in response to Commissioner Hunter's question. And these hearings are already bringing about a change to this thinking, preparing - the preparation that goes for Ministers and Departments to come to be ready to be our best before you today has required a huge amount of thinking and has challenged the way we work already.

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We have had this discussion. We don't talk too much about what happens at the Cabinet table. We have had these discussions in Cabinet acknowledging that we need to be ready for Treaty, but we also need to be recognising that we can continue to make change and drive better outcomes along the way.

45

COMMISSIONER LOVETT: Can I just ask one more thing? Premier, you said earlier you have been on your own learning journey around uncovering the truths around massacres and even just in - again on Wurundjeri Country alone. Do you accept that First Peoples have been advocating and articulating what has happened for, you know, since the whole time really? I understand you are on your journey, but our people have been saying this for 200 years what really happened to us. I just want to see if you accept that.

THE HON. JACINTA ALLAN: I most certainly do. My references to my learnings speak to - it is not that before my appearance today I was not aware of the dispossession and the disadvantage, and the wrongs that were - occurred and then the State - the State was colonised. My learning was deepened by and expanded in terms of the brutality. That was the thing that - that was the area that was particularly concerning to me that I hadn't learnt about, the depth and the extent of the brutality that went on as part of that. So I most certainly accept that the conversations and the points didn't start with the commencement of this truth-telling Commission.

There have been First Peoples going - well, going back since the very first time, 236 years ago. And I was reflecting when we were at Coranderrk last Tuesday that in the face of centuries of dispossession and disadvantage, and what that has resulted in, we continue to see the strength and the resilience today of First Peoples' culture being continued or being practised, the work that is being done to reestablish that connection with language, with dance, with culture. And I think - again, I think that is something that Andrew spoke of earlier as well, that strength and resilience which is quite remarkable given that experience of colonisation.

COMMISSIONER LOVETT: Thanks. Not only resilience but resistance. Thanks, Premier.

THE HON. JACINTA ALLAN: Thanks.

MR McAVOY SC: Premier, I just want to take you to some evidence that was given in Robinvale on 23 April. During that hearing Minister Harriet Shing, Minister for Water gave evidence that the total revenue received to the Victorian Government from water alone over a 13 year period from 2010 to the financial year 2023 has been just over \$83 billion, and it was her evidence that none, none of that \$83 billion had been distributed to First Nations for the purpose of acquiring water, which has been the consistent ask of First Peoples in relation to their water rights for some time.

It was then put to her that there is nothing stopping the State of Victoria, responsible as it is for the dispossession of First Nations peoples from their lands and waters, from funding a buy-back scheme to enable Traditional Owners to purchase direct water entitlements beyond political will. Now, that is the evidence given and in response to that question Minister Shing said, "No, there is not". Do you agree with that observation from Minister Shing?

THE HON. JACINTA ALLAN: I would. I haven't had the opportunity to review her transcript, but I would acknowledge her presentation - I would agree with her presentation of that.

5 **MR McAVOY SC:** You understand the term "political will" has a broad range of meaning. But the question then must be asked, why has there been no political will to fund water buybacks when First Peoples have made it abundantly clear over a very lengthy period how important water is, particularly cultural flows are to the health of their Country and to the health of their communities?

10

THE HON. JACINTA ALLAN: Commissioners, I am not certain I am able to give an answer as to why historically there has not been the political will to provide a capacity for First Peoples to buy-back water. Water is the - the regulation of water is an incredibly complex area and very contentious and contested area across the community. I am not in a position to answer why that has not been the case to date.

15

MR McAVOY SC: It is the case that you haven't been in the position of Minister for Water at any time during your parliamentary experience?

20 **THE HON. JACINTA ALLAN:** I do live in the Murray-Darling Basin though and am very familiar with the challenges of water, but no, I have never held that portfolio.

25 **MR McAVOY SC:** But the intent of the question, you would understand, Premier, is to examine why it is when there is so much money washing through, if you will excuse the analogy, so much money washing through the water sector that none of it has been made available to First Peoples to buy-back water, which they shouldn't arguably have to pay for anyway, but it seems to be the only way into an over allocated water market.

30

THE HON. JACINTA ALLAN: Yes, I do accept that.

35 **MR McAVOY SC:** Now, I just want to show you an article from 'The Australian Financial Review' it should appear on the screen. If you can just zoom in on the title:

"Developers swoop on 200 million dollars of outer Melbourne housing sites".

40 The article is a December 2021 Australian Financial Review article, which shows that \$200 million was paid for 85 hectares at Mickleham in Melbourne's outer north. From that that parcel - there were two parcels involved, it was proposed that there be a housing development, residential housing development which would clearly, under the - was intended to make the developers a significant amount of money. The purpose of showing you that is not to make any observation about that particular transaction, because there are many like them, as you will be aware.

45

But if we go to the next slide you will see that the properties the subject of the transaction are the ones outlined in yellow on the map on the left, 35, 37 and 38, and

the yellow to the right there is a second small piece. And you can see on the map on the right, it is an old parish map from 1858, which shows the original purchase of that land or acquisition of that land by grant from the Port Phillip Bay governor, or the New South Wales governor in 1848, sometime around there. Now, you can see -
 5 if you look closely, you would see that the land is in the ownership at that time of Archibald McLachlan and an R Brodie, and it was known at that stage as part of the Dunhelen estate.

10 So the person who was referred to on that document as Archibald McLachlan was the original grantee of that land which was, of course, lands that shortly before was in the ownership of First Peoples. You can see that? Now, these lands, it was clear, were taken from First Peoples and given to British squatters or free settlers in 1848. The point of taking you to this material is simply to illustrate there is extreme wealth, extreme wealth being made from parcels of land that were once owned by First
 15 Peoples for which they've never been compensated. Do you accept that?

THE HON. JACINTA ALLAN: Yes, I do.

20 **MR McAVOY SC:** Never been compensated. The second point is that unless - unless there is substantial investment in a land redress or buy-back scheme, First Peoples will never be able to afford to participate in the market, nor afford to live on the lands, the best lands on their Country. They will be relegated to the poorer, cheaper lands because they can't afford to pay the top dollar for the best parts of their land, which they would have enjoyed themselves once upon a time. Do you accept
 25 that proposition?

THE HON. JACINTA ALLAN: I certainly accept that ongoing economic disadvantage has its origins in the dispossession of land at the point of colonisation.

30 **MR McAVOY SC:** But do you accept also that the value of land as it now stands and the ongoing increase in the value of land will mean that it is highly unlikely that First Peoples in Victoria will ever own - re-own the most valuable parts of their Country?

35 **THE HON. JACINTA ALLAN:** It is difficult for me to answer that in a - in a - in a - as a - as a - in a universal way, but a - sorry, apologies, Commissioners, let me start that again. It is challenging to answer that in its broader sense, but in terms of the issue of the disconnection of land and its connection to wealth, absolutely agree that it is difficult, very difficult for First Peoples to be able to have land that they never
 40 ceded be returned, if they were - if there were attempts to purchase it on the open market.

45 **MR McAVOY SC:** Premier, you would accept that it is no coincidence that the lands which were the subject of villages and ceremony and activities, ritual, were also the land that were in the best locations, closest to water and animals and they are the very locations that the squatters sought out and they were the first to be taken, and they are now the most expensive in the state. And is it the case that First Peoples

in Victoria have to get used to the concept that they will never get the best of their lands back?

5 **THE HON. JACINTA ALLAN:** Commissioners, that is challenging to answer, because again I am not going to pre-empt what this Commission may recommend to government, or what may be considered as part of Treaty negotiation, but I will acknowledge the statement that it is very difficult for First Peoples to, as I said before, purchase land on the open market. That prime land that you spoke to, there is always a very strong connection. Good land is often associated with a good water source and the value goes together, so I do acknowledge that.

10 **MR McAVOY SC:** And perhaps going back to the question before, in circumstances where there is no ownership of any water rights either, that issue is then compounded, is it not?

15 **THE HON. JACINTA ALLAN:** I would agree with that.

MR McAVOY SC: And do you accept that in terms of the ultimate Treaty outcomes that land ownership in freehold might form a significant part of the equation?

20 **THE HON. JACINTA ALLAN:** I - I accept that that may form an outcome in the Treaty negotiations consistent with my determination not to cut across the Treaty negotiations.

25 **MR McAVOY SC:** And I tried not to hem you in too much on that one, Premier, but it may. Can I - I will turn now to an associated question. Is the State currently setting aside money now in preparation for Treaty settlements to allow the purchase of these very important lands for First Peoples?

30 **THE HON. JACINTA ALLAN:** That is - yes, I anticipate what that conversation may be. That is very difficult for me to answer, as it cuts across Cabinet and budget deliberations that I am simply not in a position to be able to canvas here today.

35 **MR McAVOY SC:** Is there an existing bucket of money that exists within Treasury that has already been established for the purchase of lands by First Peoples?

40 **THE HON. JACINTA ALLAN:** Again that - that cuts across Cabinet discussions and deliberations, and I am just not in a position to discuss that today. I will note that we have made available funds through the self-determination fund, but beyond that I am just not at liberty to discuss government decisions around financial allocations.

MR McAVOY SC: I am not talking about future allocations or the content of the coming budget. I am just talking about December 2023. Was there a bucket of money in existence that the government had satisfied -

45 **MS BENNETT SC:** Sorry to interrupt my learned friend for a moment.

MR McAVOY SC: Thank you. Do you have any knowledge of the existence of such an account?

THE HON. JACINTA ALLAN: There is - there - the way government - our
5 budgeting works, if once a government there is - funds are not held into accounts for purposes of portfolio allocation. They come from consolidated revenue. So should government choose to make a decision in the future to establish such a fund it would come through consolidated revenue.

10 However, I would point to - in terms of this line of questioning, draw attention to the First Principles Review and the interim community benefits formula, that was released last year, early this year, my memory - I am just trying to remember the correct date, which does speak to, in terms of supporting land justice and recognition of this area as being an area we need to address. That this is one to help guide the
15 agreement around - sorry, to help guide discussions to land agreements around land use agreements with Traditional Owners groups across the State.

MR McAVOY SC: Thank you, Premier. I appreciate the difficulty in answering the question in the way which it has been put, but I appreciate you giving it an attempt.
20 Could you turn to paragraph 176 of your statement, Premier? Can we see that on the screen, please, operator? That paragraph reads:

"I acknowledge that structural racism exists and that the State must work to address this through self-determination. I recognise in this government's commitment to
25 self-determination and Treaty that better outcomes are achieved when First Peoples are empowered to take control of their affairs".

So you have noted explicitly in that paragraph that there is structural racism present in Victoria and I am assuming that the paragraph is specifically directed towards the
30 Victorian Government. What measures are your government taking to ensure that the exercise of government power doesn't continue to harm First Peoples by reason of that structural racism?

THE HON. JACINTA ALLAN: In answering this I may go back over some of the ground I covered with Commissioner Lovett, because it does go to that point around
35 how government is culturally ready to come to Treaty negotiations, understanding that the way the State and the institutions have evolved over a passage of time, that there exists - there can exist in parts of government - sorry, I should be clear, can and does exist in parts of government structural racism that can be a barrier to equal
40 participation and good decision making for - for - for First Peoples here in Victoria.

And that is why the work we are doing to get government ready to come to the negotiation table has to recognise this within our own - with our own departmental and organisational structures, how we engage with First Peoples and that is why the
45 policy foundation of self-determination is so important. Because it is not engaging with First Peoples, it is making sure that the framework is a self-determined one and it is something that we do need to continue to work hard on. I acknowledged earlier

this is something that is going to be a challenge for government, but we need to - I can say, we need to push on, we need to be better to address some of those areas of government that continue to be a barrier to equal participation.

5 **MR McAVOY SC:** When you were talking about structural racism in paragraph 176, when that paragraph was being written, did you have in mind the failures to deliver and the failures to implement that have been taking up so much of the time of this Commission?

10 **THE HON. JACINTA ALLAN:** I had in mind that these structures that we are - in areas of government we continue to work in are a barrier, are a barrier to being able to address the areas of systematic and ongoing disadvantage. It is why these - the appearances by government at this Commission is so very important, because we are deeply challenged by this and those who work with us are deeply challenged by these
15 conversations. And so it goes to the question we are not going wait for Treaty to bring about change, we need to bring about change in response to these discussions in the Yoorrook process.

20 But again, it does speak to why Treaty is so important, because it is about putting in place a different structure that doesn't have racism, doesn't have those structural racist elements that it is built on. It is a completely new structure that is accountable, that has the accountability mechanisms around it for government. That as an empowerment mechanism when we come to the table as equals and it has got enforcement through law.

25 **MR McAVOY SC:** Thank you, Premier. I want to take you now to paragraphs 94 and 95 of your statement. Paragraph 94 you refer to the Privy Council decision in the case of *Cooper v Stewart*, an 1889 decision. You note that:

30 "In 1889 the government's ownership of Victoria was confirmed by the highest imperial court. The Privy Council determined that the colony of New South Wales 'consisted of attractive territory practically unoccupied, without settled inhabitants or settled law, when it was peacefully annexed to the British dominions.'"

35 And you have acknowledged, I believe, that - that decision had numerous factual errors in paragraph 95.

THE HON. JACINTA ALLAN: Yes.

40 **MR McAVOY SC:** Do you accept that - and so in paragraph 95 you said:

45 "The statement was taken as establishing that, in 1788, New South Wales was uninhabited. This was factually incorrect, but legally the decision had operated to deny recognition of previous Aboriginal custodianship of the lands until the High Court's 1992 decision in *Mabo and Others v the State of Queensland (No 2)*".

The factually incorrect elements of that decision I would suggest to you include the holding that there were no settled inhabitants? You are nodding your head, yes.

THE HON. JACINTA ALLAN: I am agreeing with that, yes.

5

MR McAVOY SC: No settled law and that the lands were peacefully annexed by the British to the British dominions, and we know full well it wasn't a matter of peaceful annexation. You accept that?

10 **THE HON. JACINTA ALLAN:** I do.

MR McAVOY SC: Yes, do you agree, I am talking about the decision in Cooper v Stewart, do you agree that the imposition, the imposition by the British and government of tests, in this case terra nullius, which they have developed under their own legal system to determine who was sufficiently like them to warrant being recognised as capable of having rights, that - that mechanism for acquiring other people's territory is particularly odious. Would you agree with that?

15

THE HON. JACINTA ALLAN: Yes.

20

MR McAVOY SC: You are not - they were saying, "You are not sufficiently like us for us to respect your rights.

25

THE HON. JACINTA ALLAN: I find it disgraceful and I would agree it is offensive.

MR McAVOY SC: And I suggest to you that it was a convenient fiction that the British and colonial governments created to avoid having to recognise the rights of Indigenous peoples in the territories it took by force. Would you agree with that?

30

THE HON. JACINTA ALLAN: I would agree with that.

MR McAVOY SC: I also suggest that it was never the case, never the case that the colonial governments believed that First Peoples had no laws and no territories. It was known from the very outset. Are you sufficiently familiar with the early history to accept that proposition?

35

THE HON. JACINTA ALLAN: Yes.

MR McAVOY SC: So we have already established that you are not a historian by trade or training, and not a constitutional lawyer. I just want to take you through a number of documents, which might form part of the historical landscape that exists and as a sample of the many, many documents in existence having bearing on the formation of the colony and the alienation of First Peoples' lands. The first document I want to take you to, though, it serves two purposes.

45

It serves a purpose in terms of understanding the view of the Secretary of State for War and the Colonies as he then was in 1840, Lord Russell. It serves a purpose of demonstrating his attitude then, but it also raises another more contemporary question. This dispatch from Lord Russell to Governor Gipps on 25 August 1840.

5 Sorry, tab 9, document number 9. Can you read that? It is very difficult to read, I accept. It is part of a longer dispatch at point 6 it says:

10 "I have not yet touched on the application of the Land Fund to the protection of the Aborigines. It is my opinion that 15 per cent of the yearly produce of sales should be so applied".

15 So in 1840 the Secretary of State for War and the Colonies is telling the governor of the New South Wales colony, Victoria hadn't then split off in 1840, he is telling the governor of New South Wales that he needs to put aside 15 per cent of the yearly produce from the sale of lands - so that speaks to - for the benefit of First Peoples.

20 That speaks to, I suggest, a - an understanding that the lands were the lands of the First Peoples, and secondly an obligation to ensure the protection and benefit of First Peoples from that - that - the effects of what was known to be occurring in the colony at that time. I don't intend to ask you to interpret these documents, Premier, but I will raise a number of them and just make certain points. With respect to this document, however, we just need to make clear that the - that the Victorian Government doesn't presently hold an account, which has set aside 15 per cent of land sales, since 1840, does it?

25 **THE HON. JACINTA ALLAN:** That is not a current policy position of this government, although I will draw attention to the pathway we have laid out on reaching future land use agreements with Traditional Owner groups.

30 **MR McAVOY SC:** You are not aware of there having been a Land Fund set aside for Aboriginal people in which 15 per cent of land sales are accumulated?

THE HON. JACINTA ALLAN: That is not - not to my knowledge, no.

35 **MR McAVOY SC:** We can go then to the next slide. Can you see that?

THE HON. JACINTA ALLAN: I can.

40 **MR McAVOY SC:** Thank you.

THE HON. JACINTA ALLAN: Thank you.

45 **MR McAVOY SC:** This is an extract of correspondence from Governor Phillip to Lord Sydney on 16 May 1788. So Governor Phillip had been in charge of the penal colony at Port Jackson for a mere three months at that stage. He makes the observation that:

"Not having the power of immediately granting lands to the officers likewise feels as a hardship. They say they shall be obliged to make up their minds as to whether staying in country or returning before they can know what the bounty of the government intends them".

5

And the point of bringing this to your attention is simply that there is an expression by Governor Phillip of the limits of his authority to grant lands. The next document if we can turn, please, is another dispatch from Governor Phillips to Lord Sydney. Yes. And this one is dated 9 July 1788. The point of this particular extract is simply to note that even - this was in July 1788, some five months after the establishment of the penal colony at Port Jackson, Governor Philips said:

10

"Nor do I doubt but that this country will prove the most valuable acquisition Great Britain ever made".

15

So it is clearly on the mind of the governor that they are on to something big here and he is communicating that back to Lord Sydney, secretary for the colonies. If we can move to the next slide please, which is document 10 in the bundle. Sorry. Now, this advice or extract of advice is advice from Mr W Burge, an opinion, which was signed by two other prominent lawyers named Pemberton and Follett. And it was executed on - by Burge on 16 January 1836, so this is some -

20

THE HON. JACINTA ALLAN: Sorry. Could I just get confirmation of which tab I am up to? Did you say this was under tab 10?

25

MR McAVOY SC: I believe, 10.

THE HON. JACINTA ALLAN: It appears to be the document.

30

MR McAVOY SC: Well, perhaps 12, sorry. 12. Sorry, Premier. I can follow now, sorry. My error, a bit of user error, Commissioners. I take responsibility. Now, you can see that document, Premier?

THE HON. JACINTA ALLAN: Yes.

35

MR McAVOY SC: It is an advice prepared for the Port Phillip Association about the legitimacy of Batman's Treaty. Okay. The people that prepared the advice were Burge and it was also signed off by Pemberton and Follett.

40

THE HON. JACINTA ALLAN: This is on page 324?

45

MR McAVOY SC: If you turn to page 324, Premier, if you are having difficulty reading on the screen. And so they were asked to advise about - asked to advise the Port Phillip Association, in effect, about the Batman Treaty and grants in accordance with that treaty. They say:

"I am of the opinion that as against the Crown the grants obtained by the Association are not valid and that as between Great Britain and her own subjects as well as the subjects of the foreign state the right to the soil is vested in the Crown. It has been a principle adopted by Great Britain as well as by the European states in relation to
5 their settlements on the continent of America that the title which discovery confers on the government by whose authority or whose subjects the discovery was made was that of the ultimate dominion and sovereignty over the soil, even while it continues in the possession of the Aborigines. The principle was reconciled with
10 humanity and justice towards the Aborigines, because the dominion was qualified by allowing them to retain not only the rights of occupancy but also the restrictive power of alienating those parts of the territory which they occupied".

Now, the important part of that particular advice is that even under the - a view of the world that provides that the British could acquire dominion over lands occupied by
15 other people, the First Peoples of that country continue to have rights against the rest of the world in terms of occupancy and the use of their territories. So that is the importance of that advice, so that was in January 1836. If we can just turn to the next document, which is document 13 in your bundle, and I hope you have got the extract. It is a huge document. We are looking at page 389 and 390 of the next document
20 which is, I think 13 in your bundle.

This advice is similarly to the Port Phillip Association and it was given on about the 18 January, but it is noted here, "April 1836" which is the date the advice of
25 Lushington is sent to others to review and it ended up in this historical note. The advice was given a matter of days after Burge's advice and it seems that the Port Phillip Association may have been shopping for opinions, as people are wont to do. What Lushington said and it should be observed Lushington, Dr Lushington was a parliamentarian at this time, a judge in one of the courts in England. You could do
30 both at that - in those days.

THE HON. JACINTA ALLAN: Interesting.

MR McAVOY SC: I am sure there will be many politicians who would like to do
35 both today.

THE HON. JACINTA ALLAN: I am happy to leave the judiciary to the judiciary, Counsel Assisting.

MR McAVOY SC: He says in his opinion:

40 "The grants obtained by the Association are not valid without the consent of the Crown."

And then two and three:

45 "I do not think that the right to this territory is at present vested in the Crown."

This is 1836. This is advice from England saying - on the record it, it forms part of the historical records of Australia. Lushington is saying:

5 "I do not think that the right to this territory is at present vested in the Crown, but I am of the opinion that the Crown might oust the Association".

I then ask you to turn to the next document, which is document number 14, which is another extract of a dispatch from Governor Bourke to Lord Glenelg later that same year and on the date of 13 April 1836, dispatch number 45. I would say that is it
10 there. If you can see in the margin there is a reference:

"Decision in Tasmania RE: Validity of titles to land".

You see that? And so this is Governor Bourke, the same Governor Bourke who
15 issued the Bourke proclamation in 1835 to Lord Glenelg the Secretary of State for War and the Colonies in 1836, less than 12 months after the Bourke proclamation, he says:

20 "That by a recent judgment of the Supreme Court of Van Diemen's Land considerable doubt has been thrown upon the validity of titles of landed property in either colony".

I can tell you that "either colony" is Van Diemen's Land or New South Wales:

25 "It having been decided by the court His Majesty cannot, cannot without the concurrence of Parliament delegate a power to alienate the Crown lands and that the governors of the colonies have consequently never, never possessed legal authority to execute grants, whether under the old tenure of quick rent or under the present regulations for the sale of Crown lands".
30

So Governor Bourke was on notice that there were grave doubts about the legitimacy of what was going on, about the issuing of these grants and part of that - part of the reason it may be, and these will be matters for the Commissioners to consider in writing their report and looking at all the material, but part of the reason may be that
35 because the grants dealt with the private property of individuals, namely First Peoples, the royal prerogative was simply not enough. It had to be accompanied by an act of Parliament, and that goes back to the old imperial law. Complex matters but matters that this Commission must deal with. Do you accept that, that the
40 Commission must deal with them?

THE HON. JACINTA ALLAN: Most certainly.

MR McAVOY SC: So if we turn to the next slide, which is number 15. The document is lengthy, but you should be looking at page 4. Are you looking at page 4,
45 Premier? So this document is a report from the Select Committee on Aborigines British settlements, which includes minutes of evidence and sessional papers from 1837. So this is a Select Committee created by the Imperial Parliament, because it

was so concerned about the way in which First Peoples were being treated in all of its colonies that it decided to have a Royal Commission, a Commission of Inquiry, and determine what was happening. And in that report at page 4 it says:

5 "It might be presumed that the native inhabitants of any land have an incontrovertible
right to their own soil. A plain and sacred right. However, one which seems not to
have been understood. Europeans have entered their borders uninvited and when
there have not only acted as if they were the undoubted lords of the soil, but have
punished the natives as aggressors if they have evinced a dispossession to live in
10 their own country. If they have been found upon their own property they have been
treated as thieves and robbers. They are driven back into the interior as if they were
dogs or kangaroos".

15 So the upshot of all of this is in 1835 and the years following when the lands of the
First Peoples of Victoria were being handed out by grant or for - in respect of partial
leases or squatters leases, and people were being driven off their lands and killed, it
was known that they had problems with their land system. That is what this
document says, I suggest to you. So I don't expect you to answer that. But what -
what the upshot of this is, Premier, is that it is far from clear that the State of Victoria
20 has had, at that stage, legitimacy to dispose of First Peoples' lands.

Then, Premier, I ask you to turn to document number 16. Document 16 is an extract
from a legal website called AustLII in relation to a decision of a single judge of the
Supreme Court in 1841, so four years after the Select Committee. That case is called
25 R v Bonjon and it's a case relating to the alleged murder by one First Person - one
Aboriginal man in respect of another. The judge in this case, Willis J, he takes on a
number of questions which are very pertinent to the matter - matters before this
Commission. In the middle of the paragraph you will see in bold I hope, the words -
you won't be able to see it - you can see it on the screen:

30 "Much will depend on the manner in which this colony is considered to have been
acquired."

35 So he is saying, the question of whether this person can be tried under English law
even though he is an Aboriginal person or First Person depends on the way in which
the colony has been acquired and whether the colonial laws apply to this person. He
then goes to say – on to repeat the argument of what appears to be the prosecution,
he says:

40 "Mr Clark, in his summary of the colonial law and stated at the bar by Mr Barry, says
that colonial possessions are acquired by conquest, by cession under treaty or by
occupancy. By occupancy where an uninhabited country is discovered by British
subjects and it is upon such discovery adopted or recognised by the British Crown as
part of its possessions. In case a colony be acquired by occupancy..."

45 He adds:

"That the law of England then in being is immediately and ipso facto in force in the new colony".

5 He further states New South Wales and Van Diemen's lands were acquired by discovery or simple occupation. He then goes on to say, Willis J:

10 "New South Wales was not, however, unoccupied. As we have seen at the time it was taken possession of by the colonists, for a body of Aborigines appears on the shore, which they threw down as soon as they found the strangers had no hostile intention. This being the case it does not appear there was any conquest and it is admitted here there has hitherto been no cession under treaty".

15 So what - the conclusion he comes to is that he doesn't have any authority to deal with this person, because there hasn't been a lawful acquisition of the property, because there is no - sorry. The conclusion that can be drawn from following that line of thought is that there are - that the mechanisms for obtaining acquisition of lands is by conquest, cession or occupation. He goes on to say - if we can go to the next slide:

20 "I repeat I am not aware of any express enactment or treaty subjecting Aborigines of this colony to this colonial law, that Aborigines cannot be considered as foreigners in a kingdom, which is their own".

25 So that is recounted in the judgment of Willis. If we can then just move on for a short moment to slide 11, which is on the, is on the - this is document number 19. And this will be short. In 1974 A Woodward delivered an Aboriginal land rights Commission report to the Federal Parliament. The second report, dated April 1974, has been extracted here. So the report process came up in the wake of a Northern Territory land rights decision, the Gove case. It was a supplementary document - okay.

30 I - what - the extract that you have been taken to, Premier, is headed, "Main principles" and unfortunately that is been excluded from the extract. But the main principles as observed by Commissioner Woodward were that:

35 "At the beginning of the year 1788 the whole of Australia was occupied by Aboriginal people. It was divided into groups which was understood and respected by all".

40 At 42:

"Over the last 196 years white settlers and descendants have taken over the occupation of most of the fertile and useful parts of the country. In doing so they have shown scant regard for any people in the land, legal or moral rights of the Aboriginal people".

45 It goes on at 44:

"These are simple historical facts which provide the background for the government's express intention to recognise land rights in the most appropriate way possible".

5 So even in 1974, prior to the Mabo decision it was recognised by lawyers at least that
- that there were legal or moral rights in the land possessed by Aboriginal people or
First Peoples. So the point of taking you through all of those documents, Premier, is
to demonstrate at the very least, at the very least there were various differing
opinions about the legitimacy of the British acquisition of the territory and the
legitimacy of its land dealings. Now, you would agree, I hope, that this Commission,
10 in seeking to fulfil its terms of reference, must address and make findings about these
matters of historical – where there is some historical certainty.

THE HON. JACINTA ALLAN: I – in answering this, I do want to respect the
remit of the Commission. I again, won't cut across what the Commission themselves
15 may chose to provide findings or recommendations on following the conclusion of
the hearings. I will agree that the documentations – the documents that you have
taken us through this afternoon clearly do point to the – what in my view is the
irrefutable point that sovereignty has never been ceded, and that your presentation
has demonstrated that the British government of the time was questioning, very, very
20 much the – what was going on in the colonies at the time, and that they were
questioning these issues as well, like we continue today.

MR McAVOY SC: But, these matters are all covered by the Terms of Reference
that I took you to earlier. There is no question about that?

25 **THE HON. JACINTA ALLAN:** No, there is no question. Your question was start –
and maybe I misheard it, I didn't feel I wanted to cut into the role of what the
Commissioners may recommend.

30 **MR McAVOY SC:** And I did, indeed, say that the Commissioners must address this
and I appreciate your reservation there. But you would not disagree with the
proposition that they – that the basis for the assertion of legitimate authority for the
State of Victoria is a proper matter for consideration for – by this Commission under
the Terms of Reference?

35 **THE HON. JACINTA ALLAN:** Again, the matters for consideration by the
Commission are, in my view, a matter for the Commissioners themselves, and the
documentation does again for me confirm that – that fact that sovereignty was never
ceded. It was clearly acquired and that acquisition was questioned, I think as you
40 pointed out as far back as 1788.

MR McAVOY SC: Now, Premier, this Commission has also received evidence
from eminent historians that deal with some of these issues. Indeed, Professor Henry
Reynolds, the very eminent Australian historian, referred to the failure to deal
45 properly with the rights of the First Peoples as the original sin. Now, bearing that in
mind, in evidence to this Commission on Friday 26 April 2024 Professor John
Borrows suggested that in resolution of these matters of the historical legitimacy,

states such as the province of Victoria or the Canadian provinces or the nation states, ought to understand the entry into a Treaty by First Peoples as a gift to the state, rather than the state giving something away to First Peoples, because it is taking away the uncertainty that continues to exist. What do you say in relation to that proposition?

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THE HON. JACINTA ALLAN: I have - I have not had the opportunity to review John Borrows' evidence to this hearing, so I feel a little challenged in being able to respond to his - his presentation of the matters, but it does go to the heart of what we are endeavouring to address through - again, I will speak from the point of the government's side of the negotiations, what we are endeavouring to address through Treaty, which is to address the fact that sovereignty was never ceded, that dispossession - that land dispossession has contributed to ongoing injustice and how the pathway of Treaty will address that and make change into the future.

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MR McAVOY SC: I don't ask you to make comment upon the legal conclusions that might be drawn from those things, but it is the case isn't it, that the State of Victoria has never asserted that it conquered the First Peoples of Victoria, that it has arrived at its position by way of conquest?

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THE HON. JACINTA ALLAN: This is - this is, indeed, a challenging, very challenging area and in terms of how sovereignty, in saying sovereignty has not been ceded, I do not - I think there is - as we go forward to today, and as we look at how we address that historic wrong in the way the land was settled and address the pathway to Treaty, from my perspective there is an acknowledgment that the authority of the State today is derived from our system of parliamentary democracy. How that has come to be has evolved clearly over that period of time, and it is in that context that I appear before you here today with the, if you like, the authority that is provided through our parliamentary system and through our democratic structures.

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MR McAVOY SC: It is not the case that when you are appointed as Premier they give you a box of documents to tell you how the government holds its authority.

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THE HON. JACINTA ALLAN: There are - there are legal forms and processes by which we are sworn in as Ministers, and that authority is derived through the Parliament and our parliamentary structures that is vested in us by the Victorian people.

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MR McAVOY SC: I don't need you to comment on that, Premier. Now, I note that we are very close to time. Perhaps I will deal with the remaining time in this way, Premier. As has been noted many times during your evidence and in introductions today, this is the first truth-telling Commission of its kind in the country. Other States are following. There are plans in Queensland, Queensland Commissioners being appointed last week, Tasmania, South Australia, and New South Wales having advertised its Commissioner positions in the last week as well. As Premier of this State what legacy do you want to leave as part of your work that other States and Territories can learn from?

THE HON. JACINTA ALLAN: Counsel Assisting, it is often a fraught path for current politicians and leaders to start to speculate on their legacy whilst they are still in their role. So if you forgive me for answering not so much about my legacy, but the legacy for all of us who are involved in this process, because I think if I was to speak of it in terms of being about me it would be the wrong way to answer that question, with respect, because this is a process and a journey that is not about any one particular individual. It is about addressing the historic wrong of the way the land was ceded, how that dispossession has carried through until the present day to carry too much disadvantage, disenfranchisement, economic disadvantage, all the areas that we have been canvassing in terms of how that - as I think you described it from earlier evidence, that original sin is having its impact on today.

And so I - my determination in terms of the part that I will play in this process is we achieve Treaty outcome here in Victoria. The time that will be in terms of when that will happen, as I said earlier, that is for our Treaty negotiations – negotiators to come together and determine that. But I want - what I see as the legacy of this part of the process is to be the writing of the fundamental truth of the history of our State, that truth to be told in classrooms across the State, understood in organisations across the State, for it to continue to be talked about. Because in shining the light on how our State was settled we can genuinely start to work towards better outcomes and that - that is part of the pathway to Treaty.

MR McAVOY SC: Thank you, Premier. There was certainly no intention to put a jinx on you, or to -

THE HON. JACINTA ALLAN: I am grateful for that.

MR McAVOY SC: Premier, the final question I have is that you made the point and mentioning in your statement the importance of honestly reckoning with our path. You just made it again, but you made that point in the context of hoping that we can reach for a better future. You have also highlighted the concerns about, I think, about your children, as has Commissioner Lovett, and what they will inherit, and the fact that your children have had the opportunity to learn more about the past than you did. Is there - I invite you to hazard a guess, or tell the Commission what it is you hope that your children and grandchildren might say about this work when this becomes part of our collective history.

THE HON. JACINTA ALLAN: Your question was framed as what I hope, so in terms of starting my answer with my hope and aspiration is that they see - they look back and see that we achieved it in the time that we have in our current roles, that it is not many, many years away. Again, I am reluctant to put a timeline on it, but I would like Treaty to be achieved in as short a timeframe as possible. What that timeframe looks like will be determined by those around the negotiating table. I do hope that our children and grandchildren will see that Treaty was achieved.

Not just that Treaty was achieved, but as we go together on that journey and on in pathway that we, together linked arms and pushed back against forces who don't want Treaty to be achieved in this State. That there are - continues to be forces that don't want this process to succeed in a Treaty outcome, and that we have to be
 5 resolute to see this journey through and that will be challenging for those of us in any aspects of life. That will involve challenging conversations, that will involve difficult discussions.

10 But I personally am ready for those discussions, and I hope that our children and grandchildren see that we will together be able to work through this point in time, and come out the other side with Treaty. And most importantly that when we have Treaty that it gets the lasting better outcomes we so desire, that comes about from listening and working together.

15 **MR McAVOY SC:** Thank you, Premier. Chair, that concludes our questions of the Premier. There is time, I understand, though for any further questions that the Commissioners may have and we extend our gratitude to the Premier for sitting later than was anticipated, but there is still some time, I understand.

20 **COMMISSIONER LOVETT:** Premier, we have in the hearing room today two Elders that have participated in Yoorrook's processes, Uncle Robbie Thorpe and Uncle Brendan Kennedy. Is there anything you would like to say to them and the many of hundreds of First Peoples who have contributed to this Land Injustice Inquiry who are anxious to see timely and meaningful change and
 25 self-determination?

THE HON. JACINTA ALLAN: Firstly, I would like to say thank you, because I do acknowledge that as uncomfortable and at times challenging the truth-telling is for me and those of us who represent government, it is so much harder for First Peoples,
 30 because it is First Peoples' lived experience, it is First Peoples' dispossession, it is something - and the pain of that carries through to today. So firstly, I want to say thank you to all the First Peoples who have participated either here in this room or in the hearings you have heard on Country, or in the discussions that went - have contributed to us being here today.

35 And then my second - the second observation I would like to make is that these - in having the strength and the courage to be part of this process it in turn places that ongoing responsibility on me and on government to achieve the Treaty outcome that we are all working towards and that is a responsibility that sits with me, and sits with
 40 government and that continues to drive our determination to deliver the Treaty outcomes we are working towards.

COMMISSIONER LOVETT: One more and you touched upon this, but I will just give you a further opportunity to elaborate. I have been in every corner of this State hearing my community's truth. they are often raw and hard hitting and probably
 45 make government uncomfortable in how they want to see the wrongs righted. But alongside this I continually hear my people wanting to extend the olive branch,

wanting to share our phenomenal culture with the broader community. I don't hear division, I hear healing. To quote the Assembly, "A desire to walk together".

5 I posit the idea of my people thriving and being celebrated as a vibrant part of our community. Being divisive is post-truth nonsense. Premier, I won't ask you to respond to the nonsense, but can I ask you to respond to the idea that truth and Treaty processes will bring us all together?

10 **THE HON. JACINTA ALLAN:** Yes, thank you. And if I can answer this Commissioner Lovett, by way of telling a story, telling my - sharing my experience from being at Coranderrk last week, listening to women leaders and future leaders talk about how there has - the bringing back and forgive me, Commissioner Hunter, if I haven't described this accurately, the women's coming of age celebrations. Bringing back those cultural ceremonies and what they mean, both in terms of
15 bringing future leaders forward in community.

But also too showcasing that, sharing that ceremony, sharing that culture with the entire community doesn't just bring a generosity of spirit that your comments speak to. It speaks to a desire to walk forward together, to share culture together, to learn
20 together and to get a better, stronger community and outcome for all of us. And I was particularly taken by the discussions we had at Coranderrk last week about the huge amount of work that has gone into bringing back language, bringing back - sorry, when I say, "Bringing back" I mean bringing back from decades - from decades of language not being spoken to now bringing and speaking it again, to sharing that
25 with community.

That for me speaks to what is going to be an incredibly important outcome for truth and Treaty is that we can share in this celebration of culture, celebration of First Peoples' culture, and that is something that I am particularly energised by, the
30 opportunity to broaden that - those experiences for more Victorians. I felt deeply privileged to have that experience last week and I would love my kids and lots of other children and families to be able to be part of those conversations.

35 **MR LYNDON:** Commissioner Lovett, Commissioner North and Commissioners, I am Mr Lyndon, a retired barrister, but I am here with Robbie Thorpe you mentioned in your kind words. We have two questions we would like to put to the Premier from the grassroots. Everyone else is paid to be here, there are lawyers galore. Mr Thorpe is not paid by anyone, he is basically on the dole in a Council flat. His people were once the wealthiest people in the State and they're now the poorest. We would seek
40 leave to ask two questions of the Premier while the Premier is here.

Mr Thorpe, as you know has legal proceedings in the Supreme Court in relation to charging King Charles with genocide and seeking to issue a writ against the State of Victoria. There may be questions for the Supreme Court to appear here and to
45 explain about the injustice, their part in the injustice against Indigenous people. With the leave of the Commission could we take two minutes to ask the Premier two questions?

MR McAVOY SC: Commissioners -

5 **MR LYNDON:** I can foreshadow what the questions would be if that will help you make up your mind.

MR McAVOY SC: Commissioners -

10 **MR LYNDON:** I haven't finished yet. The two questions I would seek to ask are -

MR McAVOY SC: You don't have leave to appear. Commissioners, there is a process set out in the Practice Direction for people wishing to address the Commission. A method of dealing with it is for the questions to be provided to me, and either I can ask them or if in my view that they are inappropriate or irrelevant to the proceedings then I would oppose the grant of leave.

20 **COMMISSIONER NORTH:** Mr McAvoy, would a convenient course be for you to adjourn shortly for you to confer with the people that want to ask questions and take it forward after you have heard what they say?

MR McAVOY SC: I would be happy to do that, subject to the Premier's time.

THE HON. JACINTA ALLAN: I can stay here a little later.

25 **COMMISSIONER HUNTER:** Yes, we will have a break.

MR McAVOY SC: Thank you. Given there is an indication they are only two questions I don't expect it will take long. Five minutes at the most.

30 **COMMISSIONER HUNTER:** Happy to stay in the room, if that is helpful.

<THE HEARING ADJOURNED AT 3.37 PM

THE HEARING RESUMED AT 3.58 PM

35 **CHAIR:** Sorry, Counsel, please.

40 **MR McAVOY SC:** Thank you, Chair, for that short adjournment. There are, as you are aware, Practice Directions dealing with circumstances where additional parties wish to ask questions of witnesses, to engage in cross-examination and that leave of the Commission is required. Normally three days' notice is required. There has been some notice of these questions by email last night to members of the legal team.

45 In the circumstances, Chair, I am inclined to not oppose the grant of leave for the questions, two questions to be put to the witness on the basis that they are put by me, rather than by Mr Lyndon or Mr Thorpe, as is the usual course and in accordance with the Practice Direction that Counsel Assisting ask the questions. And so I don't

oppose the application for leave to ask these additional questions in cross-examination. The questions have been provided to my learned friend for the State, Ms Bennett. I am not aware of whether she has any objection to the questions being put and she might indicate now her position.

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MS BENNETT SC: Sure. Sorry, Commissioners, we didn't get notice last night and I am not critical of that. It is difficult to see how this witness can answer these questions because of their nature, but I don't seek to stand in the way of any inquiry Counsel Assisting thinks proper and this Commission may want to hear. My job is not to get in the way of anyone asking questions of the Premier and so I am not inclined to object, save to note that it doesn't seem clear to me that these are questions which could usefully assist.

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They seem to relate to matters that are the subject of ongoing legal proceedings and I am conscious of the risk that presents the administration of justice more generally, but in the circumstances and given the overriding intention of the State to facilitate it, I am inclined to not object but to observe that these are not matters upon which I suspect this witness could give admissible evidence. But if the Commissioners are minded to hear from the Premier on these questions I won't obstruct it.

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MR McAVOY SC: Chair, I note Ms Bennett's comments, and would simply observe that it is not the case that the questions are not relevant to the matters before Yoorrook but are relevant not perhaps in entirely a manner that is appropriate for ventilation in this way. But the secondary question as to whether this witness can properly give any admissible evidence is - in response to these questions is a matter that you are entitled to take into account in terms of the exercise of discretion. If - if, Chair, if you are comfortable to allow the questions to proceed by way of questioning from me I will proceed with that, otherwise if leave is not granted that concludes the proceedings for the day.

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CHAIR: I didn't think we actually agreed to go ahead with the questions in the room, so are you asking another question now that you -

MR McAVOY SC: All I am seeking is advice from the Commission as to whether leave is to be granted today to allow me to ask these questions.

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CHAIR: You have leave.

MR McAVOY SC: Thank you, Chair. Premier, there are two questions, I will read each of them to you and give you an opportunity to answer. The first question is do you accept that you cannot get title to land or sovereignty through acts of genocide and invasion?

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THE HON. JACINTA ALLAN: Commissioners, I don't believe I am in a position to be able to answer that question at this stage.

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MR McAVOY SC: Thank you, Premier. The second question is given that you accept that sovereignty has never been ceded, does that not mean without a Treaty currently all land in Victoria belongs to Aboriginal people and the only law that governs any resident in Victoria is Aboriginal law? In other words, your law is no longer in force and you need a Treaty to legitimise your occupation?

THE HON. JACINTA ALLAN: Again, pardon me, again, Commissioners, that is challenging to answer. I would just perhaps draw attention to earlier evidence that I provided to the Commission around the State's authority being derived and reaffirmed through our parliamentary – our parliamentary democracy and through the people of Victoria.

MR McAVOY SC: Thank you, Premier. Chair, I don't propose any follow up questions from those answers and I think that concludes the proceedings for today. My learned friend, Ms Bennett, is indicating that there is nothing further from her either. I think that it is appropriate that we now release the Premier as a witness and adjourn to Wednesday. Tomorrow is a non-sitting day, adjourn to Wednesday, at which time we will hear evidence from a panel comprising various churches.

CHAIR: Thank you, Counsel. We have now concluded today's evidence, thank you. Thank you Premier, thank you very much for your staying for that extra time as well.

<THE HEARING ADJOURNED AT 4.06 PM