



TRANSCRIPT OF DAY 11 – PUBLIC HEARING

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

FRIDAY, 26TH OF APRIL 2024 AT 9:00 AM (AEST)

DAY 11

HEARING BLOCK 6

MS FIONA McLEOD AO SC, Senior Counsel Assisting
MR TONY McAVOY SC, Senior Counsel Assisting
MR TIM GOODWIN, Counsel Assisting
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<THE HEARING COMMENCED AT 9:07 AM

CHAIR: Good morning. Welcome to this hearing of the Yoorrook Justice Commission. Today, we continue our inquiries into the land justice and injustice in hearing block 6. I would like now to invite Commissioner Hunter to do the Welcome to Country.

COMMISSIONER HUNTER: Thanks, Chair. So I would like to acknowledge we are on the lands of the Wurundjeri, pay my respects to Elders past and present, and just reflecting on being out on Country, Tati Tati, over the last 24 hours and then previously being out on my own Country, just like to acknowledge that Country heals us and that Country is part of us and comes with us and it holds our ancestors safe in their dreaming. And I was just reflecting on that as we were out, being able to hear people's truths on their own Country which, in a way, is a really safe space. I want to acknowledge all the lands across Victoria, all the Traditional Owners, all the Elders who are here who are in the room and listening online, and Wominjeka.

CHAIR: Thank you, Commissioner Hunter. I would also like to pay my respects to Wurundjeri and thank them for the hospitality and the experiences we had earlier in the week, and also very uplifted by being back in river Country yesterday in Robinvale and catching up with family as well. Could we have appearances please, counsel.

MR McAVOY SC: May it please the Commission, my name is McAvoy. I appear as Counsel Assisting the Commission. Commissioners, I too acknowledge that we are today on the lands of the Wurundjeri and I echo Commissioner Hunter's words in relation to the importance of value of taking evidence from people in the safety of their own Country. I might indicate, Commissioners, that Ms Emma Watt from VGSO is here on behalf of the State, and State Counsel will be arriving shortly. Thank you.

Now, Commissioners, there is - there are three sessions today. The first session is international perspectives and self-determination which commences now and runs through until 10.30am, followed by evidence of Uncle Gary Murray starting at 10.45am taking us through to 1.30pm, and then at 2pm, a panel which has the title Cultural Fire Panel which includes Matthew Shanks, Katherine Mullet, Mick Bourke and John Clarke.

With respect to both Uncle Gary Murray and the fire panel, Counsel Assisting will be Tim Goodwin.

However, this morning with the international perspectives we are very fortunate to have with us Ms Minda Murray and Professor John Borrows from the University of Victoria, British Columbia, Canada. Professor Borrows comes to us via online evidence, and unless there are any other matters which you would wish to raise, Chair, I propose to call the witnesses and commence that panel.

CHAIR: I welcome you both, John and Minda. Thank you very much for joining us today.

5 **MR McAVOY SC:** Thank you, Chair. I call Minda Murray and Professor John Borrows. Firstly, Minda, could you tell the Commissioners your full name and your current position or role.

10 **MS MURRAY:** Hello my name is Minda Murray. I am a proud Yorta Yorta woman. I also have got ties to Wamba Wemba, Dja Dja Wurrung and Dhudhuroa Country. I am now working as a Research Fellow and PhD candidate at the Centre for Indigenous Policy Research at the Australian National University.

15 **MR McAVOY SC:** Thank you. The evidence you will give to this Commission will be the truth?

MS MURRAY: Yes.

20 **MR McAVOY SC:** Thank you. I will turn to Professor John Borrows. Professor, could you tell the Commissioners your full name, please.

25 **PROFESSOR BORROWS:** Yes, I am John Borrows, and I am at the Faculty of Law at the University of Toronto Law School, Loveland Chair in Indigenous Law. And I am from the Chippewas, the Nawash First Nation on the shores of Georgia Bay, Ontario, Canada.

MR McAVOY SC: I apologise, John, for introducing you from your previous position.

30 **PROFESSOR BORROWS:** No worries.

MR McAVOY SC: It might be some years old now. Now, do you undertake to tell the truth in respect of the evidence that you will give to this Commission today?

35 **PROFESSOR BORROWS:** Yes.

MR McAVOY SC: Thank you. Now, I might just start with you, Minda, and ask you to give the Commissioners some description of your current doctoral work.

40 **MS MURRAY:** Sure. Firstly, I would also like to acknowledge Country and pay my respects to Wurundjeri Elders past and present, and to state what a deep privilege it is today to be here and, yeah, I just want to acknowledge also that sovereignty was never ceded on these lands or any lands across Victoria. Again I am a proud Yorta Yorta woman, I have ancestral ties to Wamba Wemba, Dja Dja Wurrung and Dhudhuroa Country.

45 I'd state my standpoint first, because I think that's important in stating my thesis. So I come from a strong family. I am the granddaughter of Reginald Murray Senior and

Mel Charles who lived at Cummeragunja Mission. I am the daughter of Frederick Murray and Jill Archer. My dad was born in Mooroopna and lived on the flats in the 1950s. From an early age, I have been exposed to the interaction between my mob and the government. My dad was employed by the government as a manager centre
 5 for the Dharnya Centre cultural camp in the Barmah Forest when I was five years old. So, yeah, we lived in the ranger house on Country at the Dharnya Centre. And this was also at the tight of the Yorta Yorta Native Title determination. It was because of this I learned young that as an Indigenous person in this country, I was born into a political existence whether I liked it or not.

10

So yes, I am now undertaking a PhD at the Centre for Indigenous Policy Research, Australian National University. My thesis - working title - A Story of Determination: A Video Account of Aboriginal Self-determination in the State of Victoria. This thesis recognises this policy change requires an international cultural field of
 15 engagement which will be explored through ethnovideography research undertaken from multiple standpoints: one from the public service who is reforming policies and ways of operating, but more importantly First Nations who are governing as sovereign peoples interacting with this reform. The thesis is a creative exegesis and utilises videography to record and share the stories and experiences of research
 20 participants, and it does so to celebrate and share information in a way that is consistent with Indigenous knowledge transfer via storytelling using contemporary methods.

I hypothesise that structural change, mechanisms of governments and its governance,
 25 removal of institutional barriers and building relationships are key processes enabling First Nations self-determination in the State of Victoria. I will explore the overarching question, what does self-determination mean to Traditional Owners and the State Government in Victoria, what are the aspirations of each, and is the Victorian self-determination policy reform enabling Traditional Owners to achieve
 30 their aspirations for Country.

MR McAVOY SC: Thank you. Understanding that your doctorate work is still a work in progress, are you able to give the Commissioners any observations as to how the State of Victoria is approaching self-determination and any observations as to the
 35 role that you perceive international human rights and the United Nations Declaration on the Rights of Indigenous People have played in that?

MS MURRAY: Sure. So firstly, it is known that from the moment of British settlement in Victoria, Aboriginal people have been fighting for self-determination.
 40 We have heard in previous hearings historical policy approaches. Until the 1950s, it was largely protectionist and assimilationist. In the 1960s nationally, there was a shift and a rise in the call for equal rights. It was during this time Victoria commissioned a report known as the McLean Report in 1957, and this found significant issues with the legislation and basically accused the Aboriginal Protection
 45 Board of laissez-faire policy making and an avoidance of responsibilities.

So the government was shamed into action and proceeded with a flurry of policy making. Shortly thereafter, the 1967 referendum happened. It's during this time that the first policy emerged from within State Government that spoke to self-determination. The 1966 policy document emphasised that Aboriginal views on
5 Aboriginal matters should be given full consideration, and that they had the right to retain their unique cultural identity. Shortly after, the Aboriginal and Torres Strait Islander Commission came along. Victoria had two regional bodies under this. Those Aboriginal-led regional bodies action plans, there was a call for self-determination in those. There are views that the government response to this was one of
10 self-management rather than true self-determination, though, so in other words, service delivery. So way back then, I think there was a misrepresentation or misunderstanding of what self-determination is.

So yeah, that sort of meant that back then Aboriginal peoples - the government
15 believed self-determination was Aboriginal people delivering their contracts, so government - government would set the direction and Aboriginal people were given contracts to deliver that, so yeah, a bit different to what self-determination actually is and means. So yeah, it shows from these early days there is a gap between policy rhetoric and practice. The understanding of self-determination back then falls short
20 of what true self-determination is.

So we step through time a little bit. Notably in 2006, we had the Aboriginal Heritage Act where Traditional Owner groups of an area were recognised as primary
25 guardians, keepers and knowledge holders of Aboriginal cultural heritage. This was a step in what's now termed within government as formal recognition, although I prefer to term it "colonial recognition". I do this to draw attention to the fact that we've always had formal recognition within our own government structures, Indigenous ways, despite colonisers not recognising this. But this opened a space for a more assertive voice within government platforms.
30

So I will speak a little bit now about the policies that followed shortly after that. The Victorian Indigenous Affairs Framework, 2006 to 2010, that aligned heavily with the national Closing the Gap approach, and it had a deficit approach. Consecutive
35 versions of this State policy have steadily evolved into a more strengths-based approach. Versions include the Victoria Aboriginal Inclusion Framework 2010, Victorian Indigenous Affairs Framework 2013. But notably language in the policy has changed over time. A key thing to note is that the statewide policy directly after Australia's signing up of the UN Declaration on the Rights of Indigenous Peoples would be considerably - considerably different in its approach.
40

So these - through time you can have a look at these - the language in these policies, and it goes from inclusion to engagement to strengths-based and, most recently, empowerment and rhetoric, in practice in various ways. The current Victorian
45 Aboriginal Affairs Framework is heavily influenced by UNDRIP, with the key principle being self-determination. Self-determination is considered to be the key Indigenous principle worldwide for Indigenous people achieving their aspirations for

life and land and waters. I'll also note there are 46 articles in UNDRIP, not just the four and five that many policies are underwritten by.

5 Also, I note that our Indigenous and human rights did not begin at the creation of UNDRIP. These rights have always been since time immemorial; they have just been denied. The international framework does provide some accountability to governments. I would also note that currently, while self-determination is an international human right, the Victorian Charter of Human Rights, to my knowledge, still doesn't fully realise this right. This is something I believe Treaty can hopefully
10 address.

So yeah, there is a little bit of background about how we've got here. The current VAAF, the Victorian Aboriginal Affairs Framework, I think that was current until
15 2023, so we are currently outside of any of that framework. It utilised self-determination heavily in setting its priorities. I do recall working for the government during this time and during the release of that, and even then, despite UNDRIP having made attempts at defining - well, it didn't define self-determination; that is up to Indigenous peoples and that is a key element of it. But even - I think it was four, five years ago when that really gathered momentum in terms of - within
20 government amongst employees, there was still this sort of sense of government does self-determination, and there was still this sort of misunderstanding about what self-determination was from within government. We have seen that change a lot in recent years, and still there is daily examples of self-determination and incredible leadership from Aboriginal peoples across the State in, yeah, asserting their
25 self-determination rights. Yes, so I'd just like to draw attention to that.

MR McAVOY SC: Thank you. I might just now turn to Professor Borrows. I might initially give you the opportunity to speak a bit about your experience, Professor Borrows, just to put your evidence in a bit more context. Would you like to take the
30 Commissioners through some of your experience and your recent work?

PROFESSOR BORROWS: Sure. So I did a masters and doctorate in the field of Indigenous law and self-determination, and I started teaching back in 1992, and so I have been a Professor of Law now for 32 years. And I have worked at law schools
35 across Canada, particularly in British Columbia and Ontario, visited as guest lecturers in many of the law schools across Canada. I have also been a Professor of Law at University of Minnesota for five years, where I taught Federal Indian Law dealing with Indigenous peoples in the United States as well as courses in tribal courts, because in the United States, tribes, as they are called, are recognised as
40 self-determining and so they have dispute resolution bodies in addition to their legislative and executive branches. I have been teaching as a fellow at the University of Melbourne law school for perhaps about 10 years now. I teach a LOM course, a Masters of Law course, in comparative and Indigenous rights. So I am usually there every year for a short period.

45 And then I've also done work in the New Zealand context, as the Law Foundation visitor in that country, visiting all the law schools and visiting Māori communities as

a part of that work, and from time to time, have done some work in Scandinavia with the Sami people, and sometimes in Latin America with Indigenous peoples there. But my work is primarily focused on the resurgence of Indigenous law in Canada. And recently, we developed a joint degree in Indigenous law and the common law at the
 5 University of Victoria Law School, and we are building a national centre in Indigenous law that will house the work there on a research basis, and the teaching and community access development of that. And there is more to say, but that is just a bit of an introduction.

10 **MR McAVOY SC:** Thank you very much. And is there a potted version that you can give the Commissioners of Anishinaabe Ojibwe's path through self-determination?

PROFESSOR BORROWS: Yeah. So Anishinaabe people are of the Great Lakes.
 15 We've been here for thousands of years. We live in what is now called Quebec and Ontario, Manitoba, Saskatchewan, a little bit into Alberta as well as being in Michigan, Minnesota, a little bit into North Dakota and Montana. So we are a large group of people. There are probably about 100,000 Anishinaabe people in these two countries in many what are called "bands", recognised under the Indian Act in
 20 Canada and under the Organisation Acts in the United States. And Anishinaabe law is verb-based - our language is verb-based. 70 per cent of our language consists of verbs. And so we think about law as something you do, something you conjugate, not something you categorise. The idea of our resurgence of law is to understand the living nature of our law, that is fluid, dynamic, that is taking from the past to address
 25 the present, so that we can have a healthy future. And in the two countries, we have different opportunities to exercise this legal tradition because the United States recognises things that are not recognised in Canada and vice versa, so our own tradition as Anishinaabe people has a lot of possibilities as a laboratory to learn how to implement law in different state contexts.

30 And our law is also based on our teachings from the sacred times, the times before time. We also take our law from the more than human world, learning from the plants and animals and fish and insects and water and rocks and - and drawing analogies from that. Our set of teachers, our professors, are the bears, the otters, the
 35 buffalo and the reindeer. So our legal archive is found in the earth. We have a literacy of reading and trying to apply law from what we learn from the earth. So in addition to the sacred, natural and environmental laws, we have laws that flow from deliberation, trying to persuade one another, talk with one another in ways that take account of our differences. And when you are deliberating with one other in a
 40 present context, you can't be just talking about the past. If you want to be persuasive, you have to talk about how the past, again, is addressing the present to have a sustainable future. So we have laws that flow from that deliberative process.

45 We also have some laws that are more like positivistic law or legislation, proclamations, rules, do this, don't do that, and then we also have laws that are customary, which are patterns of behaviour that create incentives for living well. And if you are not following these customs, there are disincentives; you will find yourself

not participating in the community in the way you would hope. All this is to say our legal tradition is rich with many sources located in many places, and it's based in our language and in our contemporary expressions of aspirations that are attempting to bring some degree of predictability and certainty and order to how we want to

5 honour our ancestors and ensure that the seventh generation from now also continues to participate in that ongoing transmission of tradition.

MR McAVOY SC: Thank you, Professor Borrows. We heard evidence on the banks of a lagoon of the Murray River system on Wednesday from a Tati Tati person, Brendan Kennedy, talking about when his people are working, their Country is their

10 boss. And that type of sentiments I think correlates closely with the law that you have spoken about, being attained from your surroundings and Country. Would that be correct?

PROFESSOR BORROWS: Yes we had a chief of the Teme-Augama Anishnabai, that's about two hours north of us; his name was Gary Potts. And he would talk about the land being our boss, and the point is you take direction, guidance, opportunity for understanding what our human responsibilities are by looking at the patterns that are found in the more than human world and then deliberating in relation to that, and

15 understanding and discussing with one another what it would require to bring ourself into better relationship with that world.

20

MR McAVOY SC: Now, you understand that in Australia, there are a number of State jurisdictions going through Treaty and truth-telling processes, or commencing. Much of that work looks to British Columbia for some guidance as having been a

25 place where those processes have recently been undertaken. Are you able to comment on the comparability between the Canadian and North American experience and the experience of First Peoples here in Victoria as you understand it?

PROFESSOR BORROWS: Those countries flow in their Western Westminster parliamentary-style systems, where you have, of course, the Prime Minister who is chosen out of the legislature, and the idea of responsible government, of course, is to ensure the Prime Minister continues to retain the confidence of the House. We also have the common law in common between our two countries, and we're both states

30 where federalism is practised. Our constitutions talk about peace, order and good government. So at a political level, some common British heritage that is shared that is quite strong actually.

35

In relationship to Indigenous peoples, you also find some similarities in that Indigenous peoples were treated in a less than and inferior way by the legal systems of Canada and Australia, the rights to vote were manipulated or denied up until, largely, the 1960s and even later in some areas. Our rights to land were also not fully recognised, and we had children removed from our communities through boarding school or residential school experiences and through the child welfare system, and

40 there is a huge degree of over-incarceration of Indigenous peoples in the criminal justice system. So there are those compatibilities.

45

I think distinctions are that Canada has long had a Treaty process, at least in most parts of the nation, that stems from Indigenous peoples' own making of treaties with the more than human world, and then Indigenous peoples making treaties with one other prior to the arrival of the European, and as Europeans arrived we continued to make treaties with one other. In the process in the early 1700s, treaties were made with the French and then later with the British, so there are over 250 years of treaties that are made with what we call the Crown here, the government.

And yet there are exceptions with that. There were no treaties entered into in British Columbia which is probably some of the reasons that Australia, in some instances, does look to British Columbia and what is happening there. There are also no treaties, by and large, in Quebec, which is a State that deals with the civil law, not the common law, as a French-speaking population. There were not treaties in the north. And so we didn't have treaties in these jurisdictions until about 40 years ago when that process recommenced in those places. And in the last about 40 years, about 40 per cent of Canada's landmass has been covered by treaties. So the north now has treaties, northern Quebec has treaties, and now they are beginning treaties to be signed in British Columbia.

MR McAVOY SC: Thank you. Are you able to comment on the modern appreciation of the principles of self-determination in Canada? Where is Canada at? Is it - I suspect it's - it takes up varied forms in different provinces, but generally speaking.

PROFESSOR BORROWS: Yeah, so the idea of self-determination first and foremost, of course, has to begin within nations. So different First Nations have different ways that they are pursuing that goal and living that life. So some of our communities are revitalising their laws around the feasting and pot latching systems where there is a giveaway and redistribution process that celebrates the owners of the country from the clans and from the matriarchs. In other parts of the country, revitalisation of Indigenous law is happening in kind of a Treaty context, as provinces and federal governments recognise these powers, and then you set out in great detail how those powers might be exercised. Others have gone to the legislatures and - and worked to secure the recognition of that inherent right to self-government. Others are focusing on language retention and revitalisation, we're focusing on their reconnection of relationships across the US and Canadian border and trying to facilitate self-determination through free trade back and forth across the border.

Others are, of course, having different opportunities opened up to them, as your question suggests, because different provinces have different laws and policies in relationship to First Nations. So there's, as I said earlier, kind of a laboratory of experimentation where self-determination is taking many different forms to meet the needs of the varied aspirations of the different communities.

45

MR McAVOY SC: Thank you. I might just turn to Minda for a moment. Does that description of a variety of mechanisms for pursuing self-determination accord with your research in relation to self-determination?

5 **MS MURRAY:** Yes, I think it does. You know, across the State, Traditional Owners, like Professor Borrows described, are asserting self-determination in everyday ways. We see it written down in many healthy Country plans, we see it - we hear it spoken often, you know, in the different - in recognising that there is different colonial recognition of the First Nations in Victoria, you know, the
10 revitalisation of language, working on Country cultural fire programs, water rights, cultural water, yeah, whether it be education, teaching Indigenous ways in schools, in preschool programs, yeah, there's - there's so many myriad of ways that people are enacting self-determination every day.

15 A notable difference, though, is that in Australia, Australia's not yet treated with any of its Indigenous peoples. And I think that's a, you know, key difference to note. You can be self-determining in ways in which we are still in a colonial structure, so yeah, there is many, many similarities, but some key differences.

20 **MR McAVOY SC:** Thank you. I might just turn back to Professor Borrows. Do you have a view as to whether the - in various governments in Canada have a deep or good working knowledge of what self-determination is?

PROFESSOR BORROWS: It is often said in Canada that support for Indigenous legal issues is a mile wide and an inch deep, and so in order to strengthen that
25 knowledge, there is a lot of educational initiatives that First Nations undertake with governments to introduce them to their territories. But for the most part, I would say that there is not a strong knowledge of Indigenous communities in the lived experiences of many legislators and the parties have platforms dealing with
30 Indigenous peoples, and there are Indigenous members of Parliament and the provincial legislatures as well, which can make a difference in the education of their other colleagues in the legislative bodies.

35 But there is a lot of work to do and really, in many ways, still at the beginning. Self-determination is a process; it is not a final destination. And a part of that process is the continued cultivation of good relationships which often, again, are founded on trying to share what your aspirations are in ways that are understandable in the language of the common law or in the broader legislative regimes.

40 **MR McAVOY SC:** Professor Borrows, in some senses, it has been expressed during evidence in these hearings that it is difficult or almost impossible for state - nation-state and State agencies to really grasp self-determination because it is not a notion that is particularly consistent with the colonial form of government, or the successors to colonial government. Is it that difficult, or do you think that there are
45 ways and means of bringing along governments into a greater and deeper understanding of self-determination?

PROFESSOR BORROWS: I - I think there are ways of bringing that - that knowledge and that experience along. We had a Truth and Reconciliation Commission that reported in 2014 in Canada. It was an inquiry into residential school experiences of many Indigenous peoples, and that led to a report that had 94
 5 calls to action, and those calls to action were not just directed to governments. The recognition in the Truth and Reconciliation Commission's report was that this was something that civil society more broadly could take up, and so the calls were to museums and cultural institutions and corporations and universities, healthcare
 10 providers and systems. There were, of course, calls to the criminal justice system and to governments as well.

But what's happened is because the calls to action aren't just in the hands of government, other sectors of society have been able to do the work of facilitating truth and reconciliation in their own sort of spheres of expertise, and then when that
 15 experience develops, there is an opportunity to scale up that experience, so from law schools to law societies and then from law societies to federation of law societies across the country. In other words, the work of developing that recognition can't just be the purview of a few; it has to be the responsibility of the many. And that
 20 responsibility is better exercised when churches and unions and sports clubs and just other ways that we are in society find excitement and find reason, because of the needs that need to be addressed to pick up that - those possibilities. So that's made a huge difference for us in the last 10 years in Canada.

MR McAVOY SC: And those observations that you have just made as to the recommendations from that inquiry are the sorts of impact that this truth-telling
 25 process that is being undertaken in Victoria might also have. I mean, I don't wish to put words in your mouth, but -

PROFESSOR BORROWS: Well, we have had other commissions of inquiry that have not had that same kind of impact. In fact, we have had over 30 Criminal Justice
 30 Commissions of Inquiry and there have been many in the health care setting. But there were three in particular that became prominent. One was the Royal Commission on Aboriginal Peoples in 1986; the other is this Truth and Reconciliation Commission in 2014. And then there was the Missing Murdered
 35 Indigenous Women and Girls Inquiry in 2019, and that those seems to have a greater impact than the other Commissions because of the educational dimension that they picked up. They were not, again, just looking at narrow sectors; they were talking to high school students and primary students, and they were talking to civil servants, and they were addressed to municipalities.

40 And those Commissions were in part successful because they didn't - just repeating myself - rest on reactions from legislatures, and that, I think, if you're hoping for some impact in your context, it would be to find not just the people that are seized with this in terms of their official responsibilities as legislators or parliamentarians,
 45 but the people who are interacting or could interact with Indigenous peoples in all walks of life. And again, these three Commissions really were quite successful in having that broader communication.

MR McAVOY SC: Thank you. I just might give you an opportunity to make any additional comment on that, the need to engage with the community in a broader level, in order to perhaps inform and embed the principles of self-determination. Is there anything you would like to add, Minda?

MS MURRAY: Yeah, sure. You know, I think we also look to government to set the precedents and take leadership in this sort of stuff statewide. But as Professor Borrows has rightly outlined, the society in general often moves quicker than government. It is less constrained by institutional barriers, law, red tape, those sorts of things. In my experience in working throughout communities across Victoria, yeah, I see immense leadership often from the education sector. Our mobs get approached quite often from local schools and they want to embed language and those sorts of things into their curriculum, yeah, so that's – that's one example of that.

Yeah, I think even in, like, the local police on the border regions up in Albury-Wodonga where one of my community ties is, they take local leadership, you know, riding along with kids in divvy vans and those sorts of things just to break down barriers. So often, yeah, I think society in general moves quicker than governments in a lot of respects.

I think communication and social media and those sorts of things plays a role also; advocacy via social media is quite strong. Yeah, so, I – I do echo Professor Borrows' reflections there.

MR McAVOY SC: Thank you. Professor Borrows, in the wake of the referendum that was held in this country regarding constitutional amendment to recognise an advisory body referred to as the Voice, there was a campaign which appears to have developed post-referendum which has sought to attack Treaty and truth-telling processes and processes of self-determination as additional or extra benefits to Aboriginal and Torres Strait Islander people in this country that the rest of Australians aren't getting, and that somehow, some application of the principles of inequality. Are those sentiments something that the Canadian First Nations experience, and do you have any response to those complaints about the inequality of recognition of First Nations self-determination?

PROFESSOR BORROWS: There are familiar views that are present across Canada, and they do find place in the varied sectors, legislatures and the media and sort of around the coffee, cooler kind of thing, but the responses to that are, again, varied and many. It is the case that treaties are regarded as a grant of rights from Indigenous peoples to the government. There are things that the government can't claim to do in relationship to land and governance without Indigenous peoples' participation. These lands were Indigenous lands prior to the arrival of Europeans.

And so part of building a constitutional order is to engage the participation and deliberation and, almost radically, democratic voices that are there in the territory

before Europeans arrived, and the idea here then through the Treaty process is to continue to build this work in progress which is Canada, to see that there is always more work to do to be inclusive of more voices, to recognise human rights, to understand the lands that we are living on also have a prior relationship that is an ongoing relationship that Indigenous peoples share with those places, and the work of understanding equality is to say that equality can sometimes require recognising difference - that is, if there is a rich person and a poor person and each was given a dollar, that doesn't necessarily bring them into a situation of equality. That is, sometimes, as I said, differentiation itself can be the mechanism for trying to bring people into a better relationship.

Now, these things can be abused as well. And so part of self-determination is to recognise that the sovereign constrains themselves, that is, the States of Australia and the State of Victoria or the Province of Ontario or the State of Canada, part of the effective exercise of sovereignty is to understand that there are limits on the exercise of that power, and that same thing goes for Indigenous peoples as well, as we exercise self-determination. That is not a free for all; that is to recognise that we are also disciplined by our laws and by our respect for lands and peoples.

And so to see that part of the work of self-determination and part of the work of developing better relationships for recognition is understanding it's not just the pushing of governmental authority to its limit; it's understanding how government authority is better exercised when there are limits. And so I just really appreciate, for instance, when Indigenous peoples might adopt the United Nations Declaration on the Rights of Indigenous Peoples themselves, and so that when we are governing our own people we will limit ourselves to ensure that there are the protections that we expect from the broader state are also protections that can be expected from our own people. And so the point I am making is to understand the living and dynamic nature of Indigenous self-determination and law and governance such that where you have people pushing back against self-determination in a kind of a Western context, that you unpack what is meant by self-determination, and you don't just regard it as a handout or a redistribution of resources; you regard it as a radically democratic participatory, engaged respect for one another across our different nations, within our nations, and, of course, going back to the land being the boss in relationship to the more than human world as well.

MR McAVOY SC: Thank you. I just might give - ask the Commissioners if there are any questions that they would like to ask of the witnesses at this point. The topic that Professor Borrows has just opened for us in relation to not only seeking to ensure that the government observes rules in relation to self-determination and independence, but that First Nations observe rules themselves, and as between each other.

COMMISSIONER HUNTER: Professor Borrows, have you got some examples as to how that's been put into practice?

PROFESSOR BORROWS: Yes. So in some instances, First Nations are creating constitutions, and in those constitutions they recognise what the structure of government will be, and that will draw on their ancient traditions and it will engage in contemporary ideas of voting and democracy, and some of the provisions of the constitution will also have human rights dimensions to them, and in some instances more than human rights. The Anishinaabe community around London, Ontario has a constitution that has the sort of structures of government but their statement of rights also includes that the more than human world has rights, so the - so the plants and the fish and the animals are part of the policy, so we are limiting ourselves in our relationship with them to ensure that they also are respected, even as we respect life, liberty, security, equality, freedom of assembly and worship, and rights to be able to enjoy speech, et cetera.

And those limits on our own governments are sometimes written in our own language. They are articulated through our own stories, our ancient stories as well as our contemporary stories, and then you find them in invitational form or sometimes documentary form in - so they could be in writing but they could also be in song, they could be in dance, they could be in stories. There are many ways that those are exemplified as living legal traditions to limit, again, as I said, Anishinaabe government recognising those governments on the Anishinaabe government actually make our government stronger, because we are respecting the need for order. We are respecting the need for due process, as it were.

And again, in the United States with our legal tradition, we have tribal courts, so that the legislative arm of our government has a check and a balance that is in accordance with our own legal traditions, so that it is not just consolidating power within our community, but it is actually diffusing power, so that there is responsibility that is allocated amongst different institutions, different leaders in terms of elected, and then within our traditional branches.

COMMISSIONER WALTER: Professor Borrows, can you tell me how the State or the Provinces have actually responded to that sort of Indigenous articulation of self-determination through that legal lens?

PROFESSOR BORROWS: Within the US context, it's recognised that tribes have a continuity of legal authority. It was there before the arrival of Europeans, it survived the assertion of sovereignty and it's being exercised today. And so the Congress passes legislation that enables the exercise of inherent self-determination, and it creates harmonisation mechanisms in some instances with the Federal Government, and sometimes it actually allows for First Nations to experiment with the work.

And in the Canadian context, there are many ways that that occurs. We have constitutional protected rights that came in, in 1982. In 1982, said the existing Aboriginal Treaty rights of the Aboriginal people of Canada are hereby recognised and affirmed. And then there's about 30 years of court cases. Those court cases have

not firmly recognised the right to self-determination at this point, although they have recognised many other associated rights.

5 As I mentioned, treaties also have been signed to implement these rights. And so, for instance, in an agreement called the Nisga'a Agreement, there's conditions - the agreement runs for 210, 30, 40 payments, there are issues of land, land title forestry resources, access to lands and roads and right of ways, fisheries, and wildlife and migratory birds, environmental, administration of justice, capital transfers, fiscal, relations, cultural artefacts heritage, municipalities authorities, participation, 10 enrolment. So you can see the list is quite broad, and this has been worked out through negotiations. The provinces agree, the Federal Government agrees and the First Nation agrees in that setting.

15 There's also been legislation that has been passed, recognising the United Nations Declaration on the Rights of Indigenous Peoples. There is a Federal statute that does that; there is a Provincial statute in British Columbia that recognises that. And those governments have developed an action plan to implement the declaration through consultation with Indigenous peoples, and one of the things that that has led to is, in the Canadian context, the Federal Parliaments referentially incorporating Indigenous 20 laws made by Indigenous governing bodies, and those laws having been referentially incorporated through Indigenous bodies are regarded by Parliament as being an inherent expression of a preexisting sovereignty that exists today.

25 And there is a case about two months ago in the Canadian context that's not based on our section 35, our recognition of Aboriginal and Treaty rights, it is just based on our straight-up federalism, you know way back in 1867, that says His Majesty binds himself, that is, the government binds themselves, to recognise the inherent rights to self-government, then that is what the power will be - that's how the power will be construed and that's how the parties will operate. And so in this instance, what you 30 have is almost like harmonisation legislation, reconciliation legislation, again referentially incorporating First Nations laws as Federal law, and being given the force of Federal law. In our constitutional structure, that makes them paramount over Provincial law.

35 There is also a provision in the legislation where First Nations can enter into a coordination agreement with the Provinces and the Federal Government so all three parties are exercising their authority on a different base. Provincial Government exercised their authority through that constitutional grant of power under section 92 of our constitution, the Federal Government exercises that authority under their grant 40 of section 91 under the constitution. But the First Nation exercises their authority from their time beyond time inherent power, and again, that is referentially incorporated as Federal law.

45 There's also ways that First Nations laws are being recognised through agreement. Right now a group in British Columbia called the Haida Nation where the British Columbia province has recognised that Aboriginal people, the Haida people, on that territory have the fullness of title, and that that title will recognise a fee simple

interests of the non-Indigenous peoples living in that territory. And so again, this is mutual recognition through agreement. Almost - well, it's like a contract, and in that setting, Indigenous self-determination co-exists alongside the provincial self-determination or exercise of governance in that region.

5

Now, what they've done in the Haida context, in some agreements they have set out disagreements. They say the Haida believe this, the Provincial Government believe that, we will agree to disagree on those points. Then we can agree on those things, so after they express their disagreement, they express their agreement, then they create principles and processes and institutions to act on their disagreement. It doesn't mean that you have to have a thoroughgoing consensus all the way throughout the entire political structure; you can get on with the work of mutual recognition with bracketing some of those areas of disagreement, perhaps dealing with those at a future day.

15

COMMISSIONER WALTER: Just to final - the state and the provinces in Canada in there have actually recognised that sovereignty - First Nations sovereignty was never ceded?

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PROFESSOR BORROWS: So in the Haida context, yes, the Province of British Columbia is recognising the jurisdiction of the Haida Nation in relationship to governance of those territories and also recognise the ownership of those territories as being Haida title. And again, in that instance, that is done through contract or agreement. In other instances, it's done through legislation, so the Parliament binds itself then has further negotiations in relationship to the process that's created by the binding themselves. And then the third avenue is the Treaty process that I referred to earlier with all of those heads of powers where they mutually bind each other to the limitations of their own spheres, then the coordination of action through those spheres to have a more democratic, participatory state of affairs.

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MR McAVOY SC: Thank you, Professor. Any other questions from the Commissioners?

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COMMISSIONER NORTH: Yes, Professor, I wonder if it's possible for you to explain simply how water, water rights, work in the contexts in which you have just described.

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PROFESSOR BORROWS: Yeah. So there are varied ways that water rights are dealt with. I would say by and large, those water rights are something that the provinces would exercise, but First Nations have access to the waters for their economic, social and cultural activities, and so there is that approach. In the Haida context I mentioned a second ago, that agreement around title. There's not been an agreement around the marine areas at this point. The Haida people are claiming title in relation to water and seabed. That is currently ongoing with litigation in the courts.

45

Likewise in my own nation, in the middle of the country, in the Great Lakes, the court has found that we do not have Aboriginal title to water on a broad basis. We

might have specific uses around certain islands or shores, et cetera, and so the area of water doesn't seem to be as developed as the jurisdiction in relationship to land. I have to say another thing here. There is something that is called Indigenous Protected and Conserved Areas where the Federal Government is working with the First Nations to recognise the stewardship that First Nations would have over particular territories, and when that jurisdiction is recognised, First Nations are exercising their own laws in combination with Provincial laws to ensure that there is not the deterioration of water quality, to ensure that there is not the diminution of the access to water in those places.

10

COMMISSIONER NORTH: Thank you.

MR McAVOY SC: Thank you, Commissioners.

15 **COMMISSIONER HUNTER:** Sorry, Mr McAvoy, can I just ask Minda, just - your PhD sounds really exciting and great. Can I just ask, being an Aboriginal woman and knowing the subject matter, can I just ask why - can you just explain why you chose that.

20 **MS MURRAY:** I think - firstly, thank you, that's very kind. I think I have chosen this subject in my PhD because I - it's a lived experience; it's come from the moment I was born. I feel like all paths have led to this. I mentioned previously that I was exposed from - the relationship between government and Traditional Owners, I was exposed to that from a very, very young age, like I lived it day to day. We had a government office - my Dad's government office was in our house. That was also at
25 at the time of the Native Title determination with Yorta Yorta, and that - I mean, I didn't fully understand it back then, I was 10 years old when that was happening, but it really instilled in me from a very early age that passion for helping, finding out first, you know, how we work together, finding ways that we can work together in
30 harmony.

It also - it sparked the rest of my career, really, and it feels like every moment along that journey has led to this point, and I'm extremely thankful that at this point, you know, the question of self-determination, what it means to our mobs, the excitement
35 over the varied ways in which we enact self-determination across the State in our Indigenous Nations, and what it means to us, what we are doing with it, but also from a government perspective and, you know, in the political environment that we are in at the moment, there's so much happening in terms of - you know, Professor Borrows was talking about that meshing and that match and where it overlaps, that
40 intercultural space where agreements happen. I feel like, yeah, at this moment I hope it contributes more to that.

Yeah, and along the way, I hope I can contribute to oral histories and capturing those assertions of self-determination, everyday acts of sovereignty, those sorts of things,
45 to help showcase that. Also to bridge that void in terms of misunderstandings between the two different world views, yeah, so thank you. Cheers.

MR McAVOY SC: Thank you, Commissioner. I might take a step back to some of Professor Borrows' early comments regarding the development of, and perhaps rebuilding to some extent of, First Nations ways of doing things and ways of being and the commitment of that to more formal structures in terms of First Nations constitutions. Ms Murray, you attended at the Native Nations Institute at the University of Arizona? You're nodding yes?

MS MURRAY: Yes.

MR McAVOY SC: You were there as a student or part of your PhD research?

MS MURRAY: I was there as a student. I was, at the time, undertaking a Masters of Applied Anthropology, Australian National University. Part of that was the opportunity to go to Arizona to the University of Arizona Native Nations Institute for a one-month intensive called the January in Tucson Governance Program. That was a life-changing experience, actually, as a young First Nations person - First Nations woman from Victoria, to spend weeks on end learning about governance and, you know, ways of interpreting constitutional law, looking at our own internal governance structures and what - you know, one of the most important things about that program was the opportunity to network with the First Nations leaders from across the world.

Most of those participants were First Nations from what academia terms the CANZUS countries, Canada, New Zealand, Australia and the United States. And we've heard a lot from Professor Borrows about Canada and North America. To be amongst those nations, and to - you know, we spoke at length about challenges, opportunities, we shared, you know, all of our similarities, differences, I reflect on one thing that Mr Borrows spoke about was, you know, constitution and, you know, that sharing of power and how often the colonial law and authorities view it as like giving away a slice of something and a slice of power. But during that month, I heard from an Indigenous leader over there who said, "Well, it's not about giving away a slice, it's about just making the slice of the pie bigger, that our governance systems, in fact, add value to other colonial systems."

And yeah, so that was a really unique experience. It gave me lots of things to bring back into my own work and into my own communities. We have utilised some of the nation rebuilding principles that I have learned from over there, and yeah, so I have had experience in trying to embed those right from - you know, like we talk about nation rebuilding, and that is a key term, really, that I learnt over there, is that we don't talk about nation building. We have nations. We had nations all along since time immemorial, and we have our own governance systems, we have our own law. We have, even on top of that, a relationship to other worlds, other beings, other - you know, we have a different world view. That adds value to, you know, the ways we govern ourselves now and the way we govern ourselves now has changed slightly. You know, we have to, because we are living in a different world now. The challenge, I think, for us moving forward is matching that up with colonial law,

seeing how far colonial law will stretch to accommodate, you know, our world views.

5 I heard before about different ways of recognising and - and law, it just jogged my memory I learnt about, in New Zealand, that there is a river over there that has its own citizenship now. So it's about being creative in different ways of recognising those sorts of things. And that is, you know, consistent with our laws and our ways of being, in that, you know, it is how we govern ourselves, but also how the world
10 back to January in Tucson, I think that sort of platform was so valuable to me as a young Indigenous person to bring that back to Victoria into my work, and, you know, I feel very privileged to have done that.

15 I feel very excited to learn where we can take these things. I think we're - we're behind in terms of time. You know, Canada has treaties with Indigenous people that has, you know - and we have creative ways of agreement making in this country now, but not so far as in constitutional law yet. But yeah, I feel like it is an exciting space. Yeah, and I think that we could definitely learn things from those sorts of
20 platforms.

MR McAVOY SC: Knowing the Victorian First Nations communities as you do, is there a place or a role for either more access to the Native Nations Institute or places like that, or perhaps the development of similar learning facilities here in Victoria or
25 in Australia?

MS MURRAY: I think there would be a great opportunity. We have some similar things here, but not to that scale. You know, there is the Australian Institute of Governance, there's various universities that have great programs in terms of similar
30 things in governance and those sort of things, but I think the opportunity to meet with other Indigenous leaders from other places is extremely valuable. We have a lot to learn from other places. And I feel like in terms of our own nation rebuilding, yeah, I think sharing information amongst ourselves is very important and learning from each other is very important, and I think something like that would provide that
35 platform.

But I think also something like that also provides a centre for governments and, you know, unions and other sectors of society to look to - for leadership in terms of agreement making.

40 **MR McAVOY SC:** Thank you. I might just ask Professor Borrows, you're familiar with the Native Nations Institute at the University of Arizona, and there are similar facilities in Canada; that's correct?

45 **PROFESSOR BORROWS:** Yes, there is something called the Indigenous Law Research Unit at the University of Victoria Law School where there are educational invitations for students, community members, lawyers, judges, politicians to come and learn about Indigenous law. Then there is research that is done through the

Indigenous Law Research Unit where communities come to the folks that work there and, through a process of collaboration, help to facilitate the revitalisation of Indigenous law within a particular context.

5 There are - work at the University of Alberta, the Wahkohtowin Lodge does that. At the University of Windsor, there's an Indigenous Orders Legal Institute. At the University of Saskatchewan, maybe it is more than 50 years old now, the Native Law Centre operates there and has national and provincial significance. There is a National Centre for Truth and Reconciliation at the University of Manitoba Law School, and not a law school, the university more generally is run by a law professor.

15 All of these legal institutions and there are many others, help to create community with various constituency, First Nations sometimes come in and they do the work with the folks that are helping them. In other instances, it is governments, in other instances, it's students going through the varied programs.

MR McAVOY SC: And my understanding is that they are valuable pathways, but many nations are forging their own rebuilding paths as well. Would that be a correct observation?

20 **PROFESSOR BORROWS:** That is absolutely right, and there's - the Department of Justice has worked with Indigenous communities over the last 10 years or so to fund projects in regard to the revitalisation of Indigenous law, and they are now in place. There are also - there are national funding agencies for the humanities and social sciences. There is also a number of multi-million-dollar projects focused on Indigenous water relations or Indigenous protected and conserved areas or working with what's called the land back movement here, and those form community relationships across the country with different scholars from different disciplines, and they are often community-led.

30 **MR McAVOY SC:** I might take you in a slightly different direction in the time we've got left. In 2023, the Vatican formally repudiated the doctrine of discovery. Where - here in Australia, had the High Court reject the doctrine of terra nullius in 1992. Are you able to make any observations as to how they - the underpinnings of colonial lawfulness are falling away and how states, nation states are then dealing with the - the need to recognise other sovereignties or, in some cases, competing sovereignties in a general sense. I know that that is probably the subject of a two-hour lecture to one of your university classes, but are you able to just to deal with that in a summary sense?

40 **PROFESSOR BORROWS:** Yeah, so our court has also said that the doctrine of terra nullius never applied in Canada. They also said the doctrine of conquest is not a part of Canadian law. And those are important statements because they show that our aspirations are to be more democratic and to leave in the past those vestiges of colonialism. But those ideas of terra nullius are persistent, and they are still there in our legal system. And so what is happening is that the courts are being more attentive to Indigenous legal perspectives. And so one of our doctrines is that you have to give

Aboriginal and treaty rights a large, liberal and generous perspective, resolving ambiguities in favour of - legal language is the Indians.

5 There are already provisions for consultation, accommodation, if Aboriginal treaty rights are going to be infringed the government has an obligation to consult and accommodate in those instances. There is a doctrine of the honour of the Crown, which means the Crown is not permitted to engage in sharp dealing and it has to act with fairness in relationship to Indigenous peoples. There are also principles that say that a morally and political defensible perception of Aboriginal rights incorporate the perspectives of Indigenous people alongside the common law. Another doctrine is that reconciliation is the purpose of our law which is to reconcile the preexisting occupation and sovereignty of Indigenous peoples with the assertion of sovereignty by the Crown.

15 And so the doctrine of terra nullius, the doctrine of conquest is being - has been repudiated by the courts, and these other doctrines are picking up in their place, but as they are being applied, Indigenous peoples still have the burden of proof to bring the cases. In other words, the Crown doesn't have to prove they have title; it's Indigenous peoples that have to prove, say that they have title, when, you know, 20 Indigenous peoples were here first and that is still a vestige of the doctrine of terra nullius.

MR McAVOY SC: The last topic I would like to take you to, which is in some manner connected with the questions that I just asked, is whether, given your vast international experience in these very fields, whether - and given your knowledge of the current Victorian processes from your work in this state, whether it can be said that the Victorian truth-telling and Treaty processes are within the sort of normative range of the progression of self-determination and recognition of ongoing rights for First Peoples in a global sense.

30 **PROFESSOR BORROWS:** It is, and this is going to sound like flattery because I am speaking to the Commission. But I've said this in my course in Melbourne, I have said it in other places, the great innovation that is happening in Victoria that has not happened in the rest of the world is a justice - a truth Commission that is struck alongside the Treaty process. In all the treaties that happen in Canada that I am aware of and in other settings, it's just negotiation between the parties, and you don't get this broader context being introduced and interrogated into about why Treaty, what is the purpose, what has been experienced between Indigenous peoples and peoples coming from other parts of the world.

40 And so yes, what is happening in Victoria is definitely within the normative range of what is happening in other countries. And in fact this Commission itself is at the cutting edge of those developments, because, like I say, I am not aware - could be out there, but I am not aware of another Treaty process that has a Truth and Justice Commission as prominent as what you've got in your jurisdiction there.

MR McAVOY SC: Thank you. I might just turn to Ms Murray. Do you have any observations in relation to the way in which Treaty and truth-telling are playing out in Victoria as compared to the international context?

5 **MS MURRAY:** Yeah. I agree that it is quite unique that the truth-telling process is running alongside the Treaty process. But I also want to acknowledge that the Treaty processes and the way in which the other British-settled countries were settled is vastly different, and that the treaties in those places, you know, rights to land was
10 - yes, it is unique and I think it is right that truth-telling is alongside and, you know, just before Treaty. To enter into treaties, you know, you must reconcile differences and the past. That is important. It doesn't make what was done - it doesn't erase that in the way in which we were settled, but you know, it does provide a platform on which we can move forward in our similarities.

15 But yeah, in - in the context of overseas, all of those countries, Treaty happened very early and I know that they may not have been perfect straight up because of, you know, the timing of them, but - and I am pretty sure, I am aware that Canada - this is definitely not my area of expertise, but Canada had historic treaties and now they
20 have modern treaties, there is a recognition alongside that there is learning and change and maturity, I guess, of the relationship. Yeah, so it is unique, but it is not - it is something that should have happened, you know, a long, long time ago, yeah.

MR McAVOY SC: Thank you. Commissioners, are there any questions you would like to ask of either of the panel members at this stage?

COMMISSIONER LOVETT: Just a question to both here, what is - what do you see the role or what is the role of government in educating the community about the importance of Treaty with First Peoples? I will ask Minda first.

30 **MS MURRAY:** The role of government, government - you know, government is meant to set directions for its citizens across the state. In many respects, I think it often happens the other way around; citizens across the state sometimes set direction and pressure governments to change. We certainly saw that in the equal rights era in
35 the mid-1900s, advocacy from Aboriginal groups and non-Indigenous groups who aligned themselves with those views in advocating for change. The unions played quite a pivotal role in that sort of thing.

40 So yeah, in recognition that there is also society on a broader level has a role to play, I think government - it - it's important that it really clearly sets out its intentions and what needs to happen. It needs to be on the forefront of it telling its truths, you know, the past injustices, it needs to be humble in those respects. It has a role to play in removing systemic barriers to treaty-making and agreement-making, dismantling
45 historic laws and processes. You know, we speak a lot about constitution and legislation and those sorts of things, but a lot of the barriers to this stuff moving forward is actually in the everyday in the systems within government, you know, and government making space for that, I think, it is very important. Listening to

community in, you know, community knows what we need, first and foremost, and government should be responsive to that is really important, and also in remaining vocal about those things, you know, embedding those sorts of things in publications plans, its media, all those sorts of things, and also in education of its employees, you know, the government is not just some invisible thing behind, you know, the people. Government is people.

And for those people to be, you know, also on board, culturally competent, open to relationships, communications, conversations with Traditional Owners, yeah, and I think the real challenge - the real opportunity here is for government to - if it is really serious about these sorts of things, is to how best to embed these processes and these agreements ongoing, so that it's insulated from, you know, further political change in the future. Yeah, so I think that is really important.

COMMISSIONER LOVETT: Thank you. Professor Borrows.

PROFESSOR BORROWS: Yeah, that's superbly said, and I would add one further point. The Canadian Supreme Court recently said affirming the right of self-government in legislation has a pedagogical and educational function, and they say that Parliament - the role of government is to form laws which will be internalised and sublimate ethics. And it says therefore - it sets down orders and directions and topics and sets the terms about which topics can be discussed. In other words, the court is saying that by passing legislation that recognises self-determination, there is an educative function there that is played by governments.

MR McAVOY SC: Commissioners, before we conclude this session, I must record the apologies of Professor Megan Davis who was scheduled to be a part of this panel but was unable to be present this morning. She was going to present online. And secondly, we have a representation from the State who - and I might request that the Commission receive appearances from the State and at this stage before we sit down.

MS FREDERICO: Good morning, Chair, good morning Commissioners. May I first apologise for not being here at the commencement of the hearing this morning. There was certainly no disrespect intended. My name is Ms Frederico and I appear today on behalf of the State of Victoria. On behalf of the State, I acknowledge the Traditional Owners and custodians of the lands in which these important hearings are taking place, the Wurundjeri people of the Kulin Nation. I pay my deep respects to their Elders past and present, and I extend that respect to all First People here today and are listening online. On behalf of the State, I acknowledge that sovereignty has never been ceded over these lands. Thank you.

CHAIR: Thank you very much.

MR McAVOY SC: Commissioner, the next panel - session is scheduled to start at 10.45 with Uncle Gary Murray. It's now 10.37. Perhaps if we - if the Commission

could resume at 10.50, that might allow time for the witness to be settled, and if we can excuse the witnesses, please. Thank you, Chair.

5 **CHAIR:** Thank you very much, both of you. Very, very interesting feedback and it was really good to hear, very positive, very positive, and the work that you are both doing is really important to our thinking, and, Minda, it is great to meet you today and to hear what you have been doing, especially here in Australia as well, and your thinking bodes well for the future for us. Thank you.

10 **MS MURRAY:** Thank you.

PROFESSOR BORROWS: Thank you.

15 **COMMISSIONER LOVETT:** Yes, certainly.

MR McAVOY SC: Thank you, Chair.

CHAIR: Adjourn until 10.50.

20 **<THE HEARING ADJOURNED AT 10.38 AM**

<THE HEARING RESUMED AT 10.56 AM

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

MR GOODWIN: Thank you, Commissioners. We now have Gary Murray present to give evidence.

30 **COMMISSIONER LOVETT:** Thank you. Welcome, Uncle Gary.

UNCLE GARY MURRAY: Thank you.

35 **MR GOODWIN:** Thank you, Mr Murray, for attending. Could you please introduce yourself in whatever way culturally you would like to, to the Commissioners.

40 **UNCLE GARY MURRAY:** I am Gary John Murray. My tribal name is Wyrker Milloo which means "messenger from the Murray River". I am the son of James Stewart Murray JP OAM, I'm Wamba Wamba, Barap Barap, Dhudhuroa and Wiradjuri clan, and my mother is Nora Murray - Nora Nicholls who is Yorta Yorta, Barap Barap, Dhudhuroa and Wergaia.

MR GOODWIN: Do you undertake to tell the truth to this Commission?

45 **UNCLE GARY MURRAY:** While the sun rises in the east and sets in the west, I will tell the truth. That is what we have been taught.

MR GOODWIN: Thank you. I would understand you would like to read an opening statement, and I invite you to do so now.

UNCLE GARY MURRAY: Yeah. Over 120,000 years or more, First Peoples are the sovereign original nations, clans, peoples, owners, occupiers, spiritual, physical, economic and legal users of all Victorian lands, minerals, skies, Victoria across some 38-plus nations. First Peoples have embedded priority rights, first rights, that is, to Victorian lands and waters including cross border lands, and cross border issue is a big issue which hasn't been discussed yet. To deny their existence is to deny the rising of the sun, moon and tide. We have an illegal occupation that is ongoing and the Victorian troop have failed to address in some substantive which way.

I note the media release in relation to soldier settlements the other day by Minister Hutchins and also by my colleague, the Co-Chair of the Assembly, Ngarra Murray. I want to read that out in relation to yesterday's Anzac Day. Former Parliamentary Secretary to the special Minister of State 1934, 11,639 returned servicemen were given blocks of land in Victoria's settlement scheme. In 1930, the Victorian Government acquired 1 million hectares of land. In some cases such as Coranderrk Aboriginal Reserve, in the hills, and Woi Wurrung Country, land was taken from Aboriginal people in the 1950s and given to non-Indigenous soldiers. Re-allocating that to non-Aboriginal people was yet another part of the terrible injustice that happened with this scheme, Minister Hutchins said. I would like to see a photo of my father up on the screen.

MR GOODWIN: I think if we can go to the submission at page 2.

UNCLE GARY MURRAY: My father, of course, was a pretty well-known prominent activist in Victoria for the whole of his life. He was a soldier. Before that, he was a bush boy at Boga and Birrarung, lived on the land with his grandparents and mother and father. That's Dad there. And he joined pretty young, under the age limit, and in 1941, and he served in some of the worst hellholes in that war - World War II event. He served in New Guinea as well as Borneo. He was to go to the band with the occupation forces, but his mother passed away and he got discharged.

He come out of that army pretty bitter. So here he was out there, picking up dead bodies, maggots on them, Japanese and Australian soldiers on the beaches in the hot weather of New Guinea and Indonesia. And he made sure that all soldiers were returned to their country for burial, whether they be his enemy or his friends, and he ran that principle and that value right through to his death in 1989. He obviously helped set up the funeral service, and he took people that passed away in Melbourne back to their Country whether they were interstate or whether they were country Victoria.

We all know about the hearse, the Aboriginal hearse out of (indistinct) that sits in the museum. We had to negotiate that with Tobin brothers. So I want to pay respect to my father, and my mother for that matter, and, given it was Anzac Day yesterday, I just thought I had to say something about that. And I have got to the say something

about this soldier settlement thing. Dad went in about three ballots. A couple of them were in New South Wales. Didn't get one. He fought for this country and he couldn't even get a soldier settlement. You think about that. He was - remember I spoke to Reverend Roy Wootton in 2007 at Grandfather Nicholl's statue unveiling in Parliament House. Reverend Wootton was the battalion padre. He told me everything that happened, because he was on duty with Dad in the battalion, 12th second division. Dad was on point. He volunteered to be on point. That means when you are walking through the jungles of Indonesia or New Guinea, you could probably be the first one to get shot. He was a very brave man and he also volunteered every time for the burial parties. That was his strength, that was his integrity and his culture, get people home to Country. That is all I have got to say about that. Any questions?

MR GOODWIN: Is there anything else that in your opening statement you would like to say?

UNCLE GARY MURRAY: There are around 38-plus First Nations if you can get the map up, if you could.

MR GOODWIN: That is on page 5 of that submission.

UNCLE GARY MURRAY: I thought I brought a bit of a weapon here. It is called a pointer, don't be fearful of it. I am not going to hurt you or nothing. Just a little red dot out there somewhere. Where are we, can I see it? No, it is not working, hey, it doesn't go on that screen. I can shoot you but I can't get him. I am going to have to wing it. All right. That is in Aboriginal Corporations language map; there is about four or five variations of it. We usually use this as a concept map. It is not set in concrete up to a point. It is a concept.

But the concept is based on a lot of research that is been done over 230 years, but particularly by Dr Ian Clarke when he did his PhD at Monash in 1990s, and he produced a very large 400-page book on identifying nations and clans, and the story of those clans and nations, and I recommend that if you haven't got it, get it, because it is a bit of a Bible in terms of conceptual mapping in terms of who is out there.

I do not believe that there are less than 38 nations. That is a furphy, that is incorrect, based on the research. If you can tell me which of those nations up there don't exist, then tell me, because as far as I am concerned that is about right. 38 nations, all right, what are we doing with them? We are combining some like Eastern Maar and Ngurai-illum Wurrung and Wotjobaluk, then the rest have had to struggle to get their rights and interests and resources to, you know, pursue those rights and interests. The rich seem to be getting richer, poor are getting poorer, with the unrecognised groups. I'm going to name some of them. Bidawai in the east, (indistinct) Dhudhuroa, Waywurru, Ngooraialum, Baraparapa, Wadi, Tati, they are some of the groups that are not recognised, not funded. We have some of those people trying to undermine those groups by saying they present a risk. That was a media statement that was put out by the Federation and three or four RAPs. They could never tell us what the risks were; I don't understand that proposition. And that went far and wide and I think

that's got a bearing on the past few years why the recognised groups are getting stronger. For example the self-determination fund if you look at the website of that trust fund, first three groups funded for 200 grand, three RAPs, we were told it would be a priority for unrecognised groups to be funded.

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And I put this to everyone, that if we can fund 29 health services for every year for the last decade or so, why can't we fund a secretariat for each of those nations, because at the moment the RAPs are funded, the TOSA are funded, Native Title groups are funded, they are getting good, getting strong and getting outcomes. But those underfunded groups are left in No Man's Land and it seems to be getting harder to get through the gate to get a Registered Aboriginal Party up the coast on the Heritage Council. It is harder to get a TOSA or Native Title claim. We have a Native Title rep body that has been a monopoly since 1997. I was involved in the north-western regional claim, I was involved in the - that was '97 to 2000. Then 2000 became the Wamba Wadi Barap claim which my more learned friend there was involved in, Justice North. I was involved after that one basically got struck out. We then went to a Wamba Barap one and that didn't work and we went to a Wamba one.

But we had to get pro bono lawyers to run the Wamba Native Title claim. To the disgrace of the Native Title rep body, they have fought any claim that is not managed by the Native Title rep body. That is a monopoly that should be broken. Why not have a bucket - a pool of money where law firms and Traditional Owner groups can go to that - that process and get the funding to get up the secretariats and to get their Native Title claims done? We are dealing with - we get emails every day from government, Commonwealth, State, Local Government, individuals, community groups, asking us to do stuff, and we haven't even got any staff or an office. Now, that's not right.

As I said, if we can fund 29 health services, why can't we fund all the nations that are out there? I think we need to restructure how we do business. If we are going to get to everybody on an equitable basis, not disadvantaged groups like some of the groups we are involved in, in the north-east and Wamba Wamba is on the north-west and Dhudhuroa, Waywurru, Ngurai-illum is in the north-east. And the stuff we are going through with the monopoly, Native Title rep body, and the Heritage Council is an absolute disgrace on the State. They are killing our Elders. You imagine being an Elder pensioner having to go to the Supreme Court and fight a case with a prospect that if you lose, if you've got a house or you've got property you could lose that, because you have got to pay the cost.

Some of our Elders had to do that in terms of the Taungurung matter. Taungurung is now subject to this massive connection report, yet the State dillydallies around, and the Taungurung do, they are stalling to the point where they are waiting for us all to die so we don't get an outcome, a just outcome, and the connection report that was done last year given to the Taungurung and the State in July, has yet to be completed with the process that we agreed to in the Supreme Court.

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The Supreme Court was simple. We drop the case because of the fear of loss of assets for our Elders and pensioners and we settled for \$200,000 to do a connection report which is basically - two ring binders cost us \$150,000. An expert linguistic anthropologist and expert historian did the report within 12 months. The battle with the Taungurung matter and the north-east Elders has been going for nearly 12 years. It's been afoot for nearly 12 years. We have been through the Supreme Court, Federal Court, and we still can't get the State to look at that report because the latest obstacle, oh, Elders went and done a Native Title claim. We done a Native Title claim, so therefore we have got to wait for the Native Title claim. But guess what? The report is also embedded into the Native Title claim evidence. The State won't deal with it. So I call on the State to deal fairly with the rest of us Elders that are left, and we did lose Liz Thorpe and Margaret Gardiner in this process, and a lot of that stress that led to their deaths is caused by the fact that we have been in litigation for so long.

That is not good enough. We are better than that. And the State and the NTRB, the NTRB I'm going to pick them out in particular, for them to get up here and basically mislead you about the trauma issue, they create that trauma, they should be called back here to explain themselves. They create the trauma. You sit in a - on a Supreme Court process or Federal Court process and you are waiting for all the bullets to come out of [Redacted identifying information] lot or [Redacted identifying information] lot, them two should be sacked, and I am calling on them. They should be sacked. They've been there too long. They've got no compassion. They are creating trauma, and we have not settled these simple issues. And by the way, the Native Title body was involved in the Wamba matter, and they got sacked, and now they are undermining that one too.

What is going on there? Why are they getting away with it? Because they are a monopoly and involved with the State, Department of Justice Native Title unit at the time, and now it's gone over to State Relations, but they are still there, they are telling you that everything is hunky-dory, well, it is not. We are losing our Elders over this stuff. And if we have got any cultural compassion or any cultural bone in our bodies we need to do something about it now before the rest of us pass. I am open to questions from Counsel now, if you like.

MR GOODWIN: Is that the opening statement? Finished your opening statement? Thank you. Mr Murray, I want to track through chronologically with you, really, the history of what we now call the State of Victoria and its impact on Victorian Traditional Owners. You have done a lot of research and have a lot of knowledge yourself from your family history into what I can call First Nations prior to European contact. And as you highlight, this map in many ways captures the diversity of groups in Victoria. Can I just get a sense from you about how Aboriginal society was structured prior to contact and the relationships between various nations in that people?

UNCLE GARY MURRAY: Lake George near Canberra, an archaeologist carbon dated some man-burnt pollen - might have been woman-burnt for all I know, but it's what they say. And he carbon dated that pollen back to 20,000 years ago. That article

he wrote was backed up by Professor Marcia Langton back - this was back in the 90s when I was in uni. So I tend to say let's talk about that time forward. Other people might say, well, we have the Keilor skull out here at Keilor, 38,000 years old, we've got Lake Mungo, about 40,000 years old, we've got Coobool Creek, about 18,000
 5 years. And we have been here a long time. They can never take that away from us. We are here; we have never left. I always believe that everybody left here, all the white people anyway, I don't know about whether that is true.

10 But in that time, we have our own nations and traditions and customs and clans, and people and territory and all that sort of stuff, arts and craft, lore, l-o-r-e, and cultural heritage of course. This has always been there and continues in a different form now. We've now got colonisation, we have the invasion, we want to talk about the invasion as well. And that has made a huge impact on who we are, how we operate in cultural terms as well as lore, l-o-r-e, and everything else. We are now in a
 15 reconstruction stage. And I think that has been a case until at least the Native Title Act came in and Mabo. We are reconstructing First Nations Traditional Owner groups, whatever you want to call them, we are getting different names, different labels. We've got to stick to the names Wamba Wamba, Barap Barap, Gunditjimara and Gunaikurnai and so on and so on. But the groups exist, and they always have and
 20 they always will.

We have the political legal issues bearing down on us, in some cases causing stress and trauma. Some stuff is good; don't get me wrong. There are positives that have come out over the last - well, since '93. People are getting some of their rights back, et cetera. But to answer your question, where does it start? 1788, 1838 in Melbourne,
 25 the impact we all know what the impact is, there's been massacres, there's been - I remember I had a conversation with the great David Gulpilil. We were standing with each other - we had a couple of beers, by the way. He said, "Why do you look like that?" And I said, "Well, why do you look like that?" Why does he look tribal and I don't? When was the last tribal person who died in this State, anybody know? Aunty
 30 Angelina Morgan, about '96. Now, that's an impact.

Are we talking our language? I am sitting up here talking English, Queen's English. Why aren't I talking to you in Wamba, Dhudhuroa or Dja Dja Wurrung? Language is
 35 important. It defines your Country. It's like Italian to Italy or Russian to Russia. What are we doing about this language stuff? I think there are only six dictionaries out there. I think what we have got to do is get the rest of the language nations, language properly researched and done. You will see in one of those books which is the white one, A4 size, have you got one of those? That is the Dhudhuroa - where is my
 40 associate? I can't call him number 12. The white one. Hand them out. The coloured booklet is the information. That's the statewide draft book that we did - when was that, 2019, from the grant we got from the State Relations. That basically identifies a lot of the information from Dr Ian Clarke's book that he did from Monash, and the white book is a local version of it, we are starting to build this booklet, it's the
 45 Dhudhuroa book. So we put the language in particular in this one. If you think about it, kids in school and university, and community people going fishing on a river, they should have the book. They should be able to access it from on the website. It's a

simple thing. The information is there. We have collected nearly 27 years of research in Native Title and cultural heritage in this State. Who has got it? The gatekeepers, the Native Title Rep Body. It's sitting in an archive in a facility in North Melbourne and there are restrictions on access and the rest of it.

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Archives is another big issue that we need to talk about. Where is all that information? We need a facility that we own and manage that is linked to satellites out in the country where people can access the archives, Public Records Office stuff, Museum of Victoria, National Archives office, all of those places that have got our stuff need to hand them over or give us copies. The example is the Diane Barwick collection in the State Library. It would cost \$20,000 to copy that whole thing, but if you digitised it, you get it out to everybody a lot cheaper. That stuff has got a lot of family trees in it. I am not saying they are all right. A lot of the stuff is right. Some stuff we need to look at again. None of this stuff is 100 per cent, 110 per cent. All right. But sometimes, you will find a line, a photo, a word that changes what you think and that is the ongoing research part. We need to keep doing.

We need to map First Nations clans a lot better than what is been done in the 27 years of Native Title Body research. Some of their research is so incompetent it makes a joke of anthropology and research. Example, to Taungurung to secure the Ngurai-illum people's Country, Taungurung took their three clans and they took their name and turned it into Taungurung clans, in effect genociding them. That is what they did. And the anthropologist excused it on the basis, that, oh, I felt sorry for them, I didn't want to leave those three clans in limbo, so he put them in the Taungurung. There is no evidence about that, that he can do that, but he did that. That's a formal thing that he did. I think if we go to that map with - the RAP maps I want to make a point about Taungurung and Ngurai-illum. Can we do that?

MR GOODWIN: Yeah, if we can bring up the RAP map. We just had it.

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UNCLE GARY MURRAY: Next page? I don't know, where is it?

MR GOODWIN: The first document that we were shown was it. Thank you.

UNCLE GARY MURRAY: Yeah. Right. If you look at the Yorta Yorta map and the Taungurung map, what is in the middle? It is not Ngurai-illum. Ngurai-illum with three clans, four ancestors, territory, have been completely disappeared. Genocided by the Taungurung ambit claim and the Yorta Yorta ambit claim, because Yorta Yorta got half of Ngurai-illum. They have turned the Ngurai-illum ancestors that are buried in the ground into Taungurung. They have turned the living Ngurai-illum people, people like Vincent Peters, Elder Vincent Peters who's about 76, and another one that's suffered a lot of mental trauma over this Taungurung matter, they have turned him into Taungurung, and he knows that he's not Taungurung. He knows that he is Ngurai-illum. That is a battle he has to fight at his age. That is not fair; that is not just. And that's black people genociding other black people compliments of the well-funded Native Title rep body. And they are the leaders in this stuff.

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I don't believe the Taungurung too much, I don't believe they are getting all the information they need to make a worthwhile decision. I believe that a lot of information has been kept secret from the majority of Taungurung people, because who - what black person would support genocide of a nation with three clans, four
 5 ancestors, territory, tradition, custom and language, why do we do that? That is unacceptable.

COMMISSIONER LOVETT: Can I jump in and ask, what is the issue with the system in that context, Uncle Gary?
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UNCLE GARY MURRAY: The context of evidence standards. If you do a Native Title claim, the evidence is higher. If you do a TOSA application, the evidence is a low bar. A drover's dog can lay a claim under TOSA. That is the system with the fresh old guidelines and the Traditional Owner Settlement Act 2015 Victoria. It's
 15 also a bureaucratic thing. Let's face it, who are the gatekeepers? The First Nations Legal Research Service now, the Department of Justice Native Title unit, [Redacted identifying information], [Redacted identifying information], the other one, and then of course you get the Heritage Council as well, because they are working together. If you get a TOSA or Native Title, you get the RAP. If you get the RAP, you are on the way to getting a TOSA or a Native Title claim. But if you are on the way of getting a
 20 reserve seat on the Assembly, there is no guarantee you will get a RAP. For example, the Wamba Wamba group recently got, first time, Assembly approved reserve seat application from the Wamba group. And they were successful, unanimous decision. And that doesn't mean that their RAP application has been in for 15 months with the
 25 Heritage Council is automatically approved. It works the reverse; if you have a RAP, you get a seat, just like that. That is unjust.

And with that particular RAP application in Wamba Country, I think the Heritage Council is stalling and making a determination on it. They've had it long enough.
 30 They've been given something like 1,000 pages of bloody evidence. They had a three day meeting in Swan Hill. Didn't get the permission of the Wamba group. We want to have a flash dinner on Murray golf club on one of the biggest desecrations in 1989 to 1992. Seventeen of our ancestors got desecrated. We put a curse on that place, and they want to go out there and have a dinner, until they realised their lack of
 35 knowledge would get out there, and that they went out and had that dinner, their name would be pretty well bad news. So they cancelled the dinner.

This is the standard in the Heritage Council. The Heritage Council should be supported by being abolished. And the legislative responsibilities, and the policy and
 40 funding should be transferred to another body, preferably to the First Peoples' Assembly, the elected arm. And I say this because the Heritage Council has been operating for 17 years, 11 RAP determinations, although some of the RAPs were joint nations and the rest of it, 17 years, 11 RAPs. That is not a good outside. We had
 45 2,000 of our ancestors, both interstate and Victoria, still sitting in the Museum of Victoria in Carlton. Why is that, when one of those responsibilities is to take those people home to their Country? And if they are not provenanced, take them to an appropriate burial site, as we've done in Weeroona Cemetery and other places. They

should not be sitting in a concrete jungle in Carlton in a museum in drawers and filing cabinets. How long have they been there?

5 In one case, the Djaara baby, an infant of about two years of age died in 1840 around
 Carlton, probably from a snake bite or disease, she got buried in a tree, tree guy
 comes along, cuts the tree down in 1904, woodcutter, tree falls down the baby bundle
 falls out wrapped up in a European dress on the top and a possum skin with all her
 earthly goods in it and remains. We had a Coroner's inquest in 1904 and
 10 subsequently she got transferred; she was obviously the head man's - head woman's
 child because there was ochre through the bundle and 156 grave goods in there,
 objects. They took her to the Museum of Victoria in Swanson Street, placed her in a
 filing cabinet for 99 years. And when we ask about her, when we were in the
 museum part, I think Tim chairs it now, we are all keen to take her home and we
 wanted to take her home straightaway.

15 They said, "Oh, can we wait another year and make it 100?" We said, "No thanks, we
 can go home now, and by the way can you show us what you did with the studies -
 research stuff?" They produced a seven-page research document in 99 years. Now,
 we put her back in another tree because we couldn't go to the original place, the tree
 20 was gone, also the guy didn't want a land rights claim on his property, the original
 site. That is where she sits right now. Now, is she in a safe spot? Is she going to be
 free from bushfires, vandals, people - desecrators or a lightning strike? The Yambala
 clan is in that area, needs to make a decision, about the long-term protection and
 preservation of her. And she is an important - important repatriation that came out of
 25 Museum of Victoria.

We have been involved in a whole heap of the repatriations. Murray Downs Golf and
 Country Club was pretty traumatic back in 1989 to 1993. I actually lost my father in
 30 that battle. But he was going up there every day, and, you know, we had rallies in
 Federal Court and all that sort of stuff to try and protect that site. So the repatriation
 stuff has to be dealt with far better, and I don't think the Heritage Council is up to it.
 You can't expect members on the Heritage Council - and all of them are RAP - all
 associated with RAPs - you can't expect them to know how to do things, how to
 prioritise things, if they come from the Murray River. They have got no knowledge
 35 about us; we are not on there. We recently got a Wamba person on there, but that
 hasn't always been the case.

Heritage Council is appointed by the Minister, so where does self-determination lie
 with that? If self-determination is such a hot issue now, why is the Heritage Council
 40 exempt from that? Wouldn't it be better to have an elected arm such as the Assembly
 to take over the legislative responsibilities, as well as the policies and the strategies
 and the implementation of what we should do to protect cultural heritage and do the
 repatriations properly? How dare we let 2,000 ancestors, human remains, sit in a
 museum in Carlton?

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MR GOODWIN: Something you mentioned in your submission just to go back in
 terms of structure of Aboriginal societies, you mentioned that there - in your

evidence that there were at least 38 First Nations. And you mentioned in your submission they comprised of more than 300 documented clans. I am wondering what the importance of clan structures are to Victorian Traditional Owners.

5 **UNCLE GARY MURRAY:** Well, when you - Counsel, when you read that book there, you will sort of see the 38 nations laid out with their clans, for example, Gunditjmara, what was identified in Clarke's research, was something like 59 clans. Now, if I take one of my clans, Yambala clan in Carlton, part of the Dja Dja Wurrung language nation, we are getting stronger as a clan. We have specific
10 territory. We want to do our Treaty which will feed into the Dja Dja Wurrung Nation Treaty, and extended - clan is an extended family group: your Uncles, Aunties, cousins, your mother, father, grandparents and all that stuff, right? Where the issues are, the socioeconomic issues are at that extended family group clan level, therefore if we are going to do anything with Treaty or cultural heritage or Native Title or
15 TOSA, the benefits have to be equitably distributed down to those family groups where the issues are. So that is my opening on that one.

But, you know, 300 clans, we put it to the now defunct Treaty Commission that she had to make sure that everybody was included, and it didn't happen; we all know
20 that. Clans were wiped out straight away, were not interested in dealing with the clans or small family groups, which is very sad, when you look at Yorta Yorta which has 12 clans and they have family groups set up around that ancestors and that. You have got 300 clans here who have just been disappeared. We are not going to work with that. We are not even going to work with 38 nations, a big campaign. Federation
25 ran against us, I am talking about the Land Justice Group was pushing this. I still think it is a live issue based on the evidence that is in the draft booklet and the rest of it.

I think we need to have a good look at that, the benefits being equitably distributed
30 down to those family groups. We seem to be setting up multi-million-dollar corporations that become fiefdoms and don't deliver to everyone equitably.

MR GOODWIN: I assume there - and, you know, prior to European arrival, there was clarity around belonging and Country and clan structures and nation structures
35 for Aboriginal Victorians. But I know it seems an obvious question, but what happened to break down that lack of clarity, I suppose, and the situations that you have highlighted today?

UNCLE GARY MURRAY: Shot with elephant guns and smash them, a
40 watermelon like that, imagine that bullet going through your head. Poisoned, raped, moved off their Country, kids killed, moved from Ebenezer Mission over to Lake Tyers in some cases, or over to Coranderrk. I have been watching that Palestine versus Israel stuff, every day I watch it on Al-Jazeera. And I see stuff going on there I imagine my people went through without the rockets and the missiles and the
45 modern weaponry they've now got.

If we had 30 or 40 thousand tribal people across all those 38 nations, what happened to them? Where are they buried? What happened to them? Did they die of disease? Were they massacred - maybe we haven't found the major burial grounds yet. You know, if you are up in the mountains, for example, and you have got a - you have got
 5 three or Four Nations up there, where are they all? What happened to them? You could do anything you want up there as a white settler with a gun, and you will get away with it. A lot of that stuff is already documented in the Gunaikurnai stuff, but I wonder about the other nations in that mountains area, what happened to them.

10 Obviously we go from Australia, getting shot and the rest of it, to smooth the dying pillow, as they used to say, we are dying out. Guess what, we didn't die out, I guarantee that. So they move on to - what was it - assimilation, turn us all into white fellas. That didn't work. Then we go into - what was it, Tim - integration, integration, that is it, whatever that meant, was sort of maybe working together with white people
 15 and the rest of it, who knows. Then we go into self-determination, all the rest of it.

We have all these policies and strategies and we get some benefits from them, but why are we here today? If it was all working, why are we doing this truth and justice stuff? Why are we doing Native Title? All those policies never worked and they still
 20 don't work. We need to reconstruct nations, clans, family groups, and we need to reconstruct the organisations that provide services to us, whether it is the Advancement League or whether it's State Relations, government agencies, we need to rethink the way we do business. I think the Assembly and the Treaty stuff is heading in the right direction, and I can congratulate the people who did the first
 25 term. I reckon they laid the groundwork for something greater to come probably in the third or fourth term and I think it is getting there. We have still got to get everybody in there, though. Everybody's got to get a seat.

MR GOODWIN: You used the term "illegal occupation", I think, in your opening to
 30 describe the colony and then the State of Victoria. On what basis do you say there is an illegal occupation?

UNCLE GARY MURRAY: Well, there is a couple of things. First up, it's No Man's Land, that's the law of England and everybody else. Terra nullius gets knocked off in
 35 the Mabo case. It's gone, so therefore we are here, it's not No Man's Land, we are here. And then the second point, I suppose, is if we are here, then we are subject to English law, why wasn't English law applied to the land thieves and everything else? And we're still tied to England, so how does it all work? You look at the Victorian Constitution, back in, what, 1860 when it first got enacted, they changed it 120 times
 40 or something. We start there, we simply say, "You have got us in the preamble of the Victorian Constitution, what about some substance in the body of the thing that gives us some power and authority back and gives us our land back, that guarantees that the Treaty stuff will not get overturned by a hostile government, National or Liberal down the track."
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MR GOODWIN: Part of the creation of the State of Victoria was to put a border between it and New South Wales. You mentioned before that cross-border issues

need to be discussed, and - on the basis that essentially that border was imposed and not created by Aboriginal Nations themselves. What do you see as the impact of some of those cross-border issues as you described them for Aboriginal Nations, particularly at that border?

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UNCLE GARY MURRAY: Yorta Yorta, the RAP, Wamba, and a couple of groups on that South Australian border, are all cross-border nations with rights both sides, and they are subject to State law, New South Wales Government as well as Victorian Government. What does it all mean in terms of say, Native Title? I will give you a case study, the New South Wales Government entered into an agreement with some people from Deni who set up the Werai Aboriginal Corporation to transfer 30,000 acres of the Werai State Forest to this group of people. Now, Werai Forest was on Wamba Wamba Country, on the New South Wales side. The Native Title rep body in Victoria didn't want to really do anything, and didn't do nothing to protect Wamba's interest, because the way that group was structured, 29 ancestors were listed in the rule book and the deal. Six of them were Wamba and 23 were from Wotjobaluk, Yorta Yorta, Ngurai-illum, Dja Dja Wurrung, Muthi Muthi, Tati and Wadi and so on. They had nothing to do with Wamba. That was the structure of the deal. So we opposed it. We had to oppose it privately because the Native Title rep body would not help us, and the New South Wales Native Title rep body was actually supporting it. So tactically, we had to put a Native Title claim in, that is what we did. We did a cross border Native Title claim, the first time in 27 years of Native Title processes that we did a cross border claim because the Victorian NTRB would never do one, and I still don't know why.

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Yet when we sacked them in 2021, we sacked First Nations, and we engaged a pro bono law firm, Massar Briggs Law, they lodged a cross-border claim within six months, six months. Now, if they could do that, why couldn't the Victorian Native Title body do it in 27 years? What is going on there? Are they working against us? Because that is what it seems to be. They are undermining the Wamba claim. They are undergoing the Ngurai-illum Waywurru and Dhudhuroa claim. They are putting money into chasing clients that will object to us, they are funding clients out of Commonwealth funding, using lawyers from Perth and Queensland against us, against Elders, against our families.

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All we want to do is finally get a successful Native Title claim and get our RAP and get a treaty done and hit the ILC for getting land back for us and water, and we are constantly undermined by the Native Title rep body. They should be abolished. They should be abolished. Their time is up. 27 years we have done, what, six claims in Native Title terms and two TOSAs, maybe three TOSAs. Well -

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COMMISSIONER LOVETT: What is the issue with the system? I have heard about the rep bodies and the issues there, but what is the issue with the system, whether it be Native Title or TOSA, making our people go through these processes? I just want to understand that.

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UNCLE GARY MURRAY: It is not the system. It's the way that people in power abuse that system. You know, if a Native Title body should go to, say, north-east Victoria and say, "All right, we are going to do a Native Title claim, we will fund each group up there" - each credible group. You have to put the criteria together and the rest of it. They don't do that. They go up there and pick it up, that is it. War starts between the groups. You've got the unfunded groups trying to fight a multi-million-dollar Native Title rep body with all their flash lawyers - I shouldn't say that; there are a lot of lawyers in this house.

10 **MR GOODWIN:** There is. I am very rarely called flash, Uncle Gary.

UNCLE GARY MURRAY: Good. You are looking flash anyway; you have a good tie.

15 **COMMISSIONER NORTH:** That only leaves one of us.

UNCLE GARY MURRAY: All right. So I think that the Native Title rep body has a lot to answer for with the unfunded unrecognised groups, after 27 years of probably \$150 million plus.

20 **COMMISSIONER LOVETT:** In your view, does the Native Title system and the Traditional Owner Settlement Agreement system work for Victorian Traditional Owners? So there are processes in place, we get that, we have a lot of evidence around that, but are they fit for Victorian Traditional Owners?

25 **UNCLE GARY MURRAY:** I think our experience over the last 10 years in particular with the Native Title rep body convinces us totally to apply for Native Title and not TOSA. Two reasons: one, that experience from the Taungurung matter; and then two, the cross-border issue. TOSA does not apply to New South Wales, obviously.

30 **MR GOODWIN:** Thanks. I want to turn now to the fight for land justice and your family's long history in that struggle. We have heard, obviously, and also from you today about the devastating impact of the forced movement of Aboriginal people on to missions and reserves. Nonetheless, some very prominent leaders grew up in that era. Who are the - who are some of the most important leaders in Victoria for the fight for land justice?

35 **UNCLE GARY MURRAY:** All of them. Every one of them, here, now and before. Every region, every local community has leaders, many are buried in the ground now which they don't even own, but the fight continues through my kids and my grandkids, myself. When I'm on here, I started this political involvement when I was in my primary school, and the old man, Stewart Murray used to take us to Communist Party meetings in Kew with lamington cakes and cordial. That was to
40 bribe, I think. They were pretty boring. And we go fast forward a little bit. We are doing the trick in 1969, we get involved in black studies with Bruce McGinness, Bob
45

Mazzer and David Anderson, and a whole heap of us. We used to go to Heidelberg, sit around the lounge floor and let everyone talk about land rights and stuff like that.

5 That scoped into - God bless us - the Black Panther days, Black Panthers. Well, we were not into violence, but we were into feeding people. And we even had a black-on concert and a black-on fashion parade, that is in East Melbourne, and we were into dashikis, which is those little black things with a little thing like that stuff. So we go through that sort of stuff. And then we end up getting involved in a community in Collingwood and Fitzroy, and obviously we all know about the legal service and the health service, and 108 Smith Street where Camp Jungai was, and the housing co-op, and a lot of things came out of that, MAYSAR I think.

15 So the movement has always been in shapes and forms and different people. But that's our history and we should value it and we should document it, and we should make sure that those that aren't here with us now, that they are recognised properly.

MR GOODWIN: And you highlight in the biography of your parents and particularly your father his involvement in the establishment of many of those key organisations in terms of the Aborigines Advancement League, the Aboriginal Legal Service, the Victorian Aboriginal Land Council, the fight for justice to retain Framlingham and Lake Tyers reserves. What is your reflection of that - of the birth of the land rights movement, and what were the critical aims of that movement at that time?

25 **UNCLE GARY MURRAY:** Yeah, well, my Wamba Wamba ancestors were Rob Roy Stewart, Jackson Stewart, Wirremander Stewart and Jessie Stewart. They were a remarkable family for that time in 1850s right through to 1940s, and it was that family that acquired land at Fish Point and at Lake Boga. And I think my daughter found some land titles where land up - land across from the lake and then land on the other side of the land and then down at Fish Point. So they were probably the first landowners that I could document that actually paid the 10 pound a year selection licence. I remember a quote from Wirremander Jackson Stewart in 1868 when he said - he was writing to the Board for the Protection of Aborigines at the time, he said quite clearly and succinctly that, "I am a native of this Country, why am I paying 10 pound a year?" Because he was poor and he was in a drought. He ended up losing that block, and I think that was the start of it for us, that Jackson Stewart lost his land because of 10 pounds.

40 And I think Dad probably knew that, so he's picked up on it as well and a lot of people have, that - we are activists. We are human rights activists. And you call us what you like, we get involved, we participate, we vote, and people have got to do that, and you have got to get active on this stuff. You end up joining - you have seen my resume, there is a long list of successes and failures, all that sort of stuff, we accept both. I think we get involved in co-ops and associations. You know I got involved in co-ops and associations, you know, we got involved in the VACG, the forerunner to VAI, co-op obviously down at 108 Smith Street, get involved there with the Camp Jungai co-op, MAYSAR and all the rest of them. We virtually lived

in the black mile, Gertrude Street and Smith Street, and you couldn't help but get involved, because the Elders at that time drove us into it, and you either got away from it, melted into the community, or you go ahead and that is what we did, we still do.

5

We don't forget what has happened to us ever. We don't forget the dispossession, the dispersal, the deculturalisation, the loss of our language and all the other bad stuff that is happened to us, never. And we have got to fix it, that is the most crucial thing. You have got to fix it.

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MR GOODWIN: One of my favourite documents in your submission is a letter that your father wrote as chair of the Aboriginal Land Council of Victoria to the then Premier, Mr John Cain. I think that's - it's at page 97 of the submission. And I think part of the original is on page 99. I'm not too sure if it has been cut off a little. That's where the Commissioners can see it, at least. And if we just highlight that second full paragraph at the top of page 99, and part of it's cut off. The next paragraph, sorry, operator. And so there is discussion of seeking compensation, trust compensation, and then the second sentence:

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"It's time your government made some real endeavour for a settlement or a Treaty agreement on our clans. Canada, New Zealand have updated past treaties, mineral rights and royalties. Only equality develops for formation to be united."

25

And so I just wanted to highlight that the call for Treaty in Victoria didn't come out of a vacuum or only commenced in the past 10 years. It's clearly been an aspiration for a long time. The 1980s were clearly a time where there were national and state conversations about Treaty, about land rights, about Aboriginal political activism. What is your reflection on the promise of those times? I know that was an important time for you as well in terms of your own political activity through various projects like Gary Foley's history project. I'm just interested in your reflections on the excitement, the opportunity, but also the struggles of those times.

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UNCLE GARY MURRAY: Yeah, I think - I think Dad would have been talking to Commissioner Bourke's brother at that time about New Zealand and Canada, because that was his bag back then; he was right into it. And Dad, he wanted to be educated too, like, David Anderson, he come around and they put all these papers on the floor, books and what not, they always come around before dinner, though, he loves his dinner, used to come around home there. So the calls for Treaty, well, it's not just about Treaty. It is about what has happened to us morally and politically, economically, socially, spiritually. Treaty is supposed to encompass all that stuff, which has been part of upside-down Country, as somebody said the other week. Well, Treaty now is trying to do right side up, right side up Country and people, and this is what it is about.

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And many, many leaders over time, both past and present and probably in the future, will keep adding layers to this call for justice through Treaty with any other form of just strategy that - that we can get our lands on. We will never give up. And we just

got to keep going, be positive about the stuff, but we also are losing a lot of people in this journey. We seem to be getting more deaths of our Elders and younger people as well over the last few years. I have noticed that myself, a lot more funerals. So I think that is a consideration. The clock is ticking, and this is our time to do something proper.

MR GOODWIN: You were critical in the establishment of the Victorian Traditional Owners Land Justice Group. Can you just tell the Commissioners about the purpose behind the establishment of that organisation?

UNCLE GARY MURRAY: Did you say I was critical of it?

MR GOODWIN: No, critical in the establishment of it, important in the establishment of it.

UNCLE GARY MURRAY: Well, the Victorian Traditional Owners Justice Group came out of the Native Title Services Victoria under the chairmanship of Graham Atkinson, and it involved 29 nations with two reps each. We would meet every quarter, funded by the Department of Justice Native Title Unit. I think they allocated something like 40,000. We looked at everything. You can look at our website. We've got stuff about natural resource management, traditional fire burning, land justice, of course - it was a big one - but the TOSA Act. We are supposedly the architects of the TOSA Act, but my recollection is that a lot of us opposed it back then.

And in the end, Native Title Services Victoria grabbed the grant from DOJ, went off behind our backs and set up the Federation of Traditional Owner Corporation without authority from the majority of Traditional Owners around this State, and the Federation today does not represent this State. It is not a Federation even, it is about 5 RAPs, and that is it, but they get a lot of funding because of their ties to the Native Title rep body, and that is a real problem in this State.

MR GOODWIN: And what was the basis for some resistance around the introduction of the Traditional Owner Settlement Act?

UNCLE GARY MURRAY: We think - we thought that the standard of evidence was too low, for starters. It was sort of new ground so we were a bit wary of it. I think we got - we can hand you some evidence about what happened back then. We have got all the files and all the rest of it. I haven't looked at it for a while. So I think it was mainly about - it was too soft. It wasn't hard enough in terms of making sure we got the right people in the right Country, and I think it's been proven; it's the Taungurung matter, look at how long that is dragged out, eight years.

So I think if you want to know why we didn't like it, look at the issues in Taungurung versus the north-east nations Elders. Because that is the case study, the classic case study that no one will go near the TOSA legislation until this Taungurung stuff is sorted. And given our experience there, why would you? You'd rather go to the

Native Title claim and come across a sympathetic judge in the Federal Court, we hope.

5 **MR GOODWIN:** As a 1980s baby - before I leave the 1980s, you visited the Warm Springs Reservation in Oregon in 1989, I believe, and that was quite an important trip for you at that time. I just was interested to hear that story of your trip and what you saw and what you learnt from that.

10 **UNCLE GARY MURRAY:** Yep. It was in 1987.

MR GOODWIN: I think there is a photo - sorry, document number 7, a photo of the Reservation.

15 **UNCLE GARY MURRAY:** Teepees. Those teepees have a concrete slab in them about three foot high to keep the rattlesnakes at bay. We never camped in those. We stayed in the resort, five-star resort. It was shaped like an arrowhead from the air. It gives us an idea about what is possible if you get your land back. Warm Springs Reservation was something like 957,000 acres, so it's huge, nearly a million acres. It was on a river, I think it was the Columbia River, and they've got their own hydro
20 scheme and they've got their own town.

Once you go through that gate, you are subject to their law, l-a-w as well as l-o-r-e. They have a tribal council, they have police to enforce the law, and they had a
25 manufacturing plant where they were doing T-shirts and clothing and all that sort of stuff. Everything was there. If we are ever going to get practical sovereignty, you have got to have your land back. You have got to have your land back, and it has got to be very large tracts of land as well. You want your people to go back on Country, you can't send them back to homelessness, no jobs, no schools. You have got to make sure that you craft something similar to this. And that was 1987, and now we
30 see, for example, on Facebook, I have seen - this is a post that someone put up, where six reservations are making \$1 billion, \$1 billion a year from casino or oil. Now, from that, they pay - people who live on the reservation a stipend of over \$100,000 a year. There is no such thing as unemployment or employment; it is volunteering. Because they can, because of that stipend. I don't know how that would
35 work in Victoria; I reckon a lot of white people would probably freak right out. Why not. Where would we do it? We have national parks and State parks here. Some of which are subject to Aboriginal title under TOSA, which is pretty useless because you can't do nothing with that title. You can't go into that park and build houses, you can't - your economic development stuff like casinos or resorts or stuff like that, and that needs to be changed. We have got to define Aboriginal title better. If we need to
40 change the legislation to do that, we should do that. Basically Aboriginal title is no better than a lease for Crown land being transferred from one pocket to the other. And a lot of groups settling under TOSA or the Native Title Act, they have gone for that Native Title stuff. They've been hooked into it. We have to find out what we can
45 do with it properly if we are to get back on Country, have jobs and education, we have got to sort that out into the bargain as well.

But the trip to America showed me that they got the land back and you can do the economic development stuff and look after your people, then it can work. We are not reinventing the wheel here. So how much land is Victoria - Victorian Government going to give us back to do that? And if they recognise that we have never ceded our sovereignty - everybody says that, but it seems to be lip service. What does it really mean in a practical sense? Are they saying that we still own the land? That is our say in that is a reparation question, you took my land forever, you have got to pay me forever concept and we have got to negotiate how we do that. At the moment, the sort of benefits that come out of TOSA and Native Title, I have got doubts about whether it is going to be viable in the long term. A long-time viability and sustainability is absolutely crucial in what we build today for the future.

COMMISSIONER LOVETT: I think that's really important. When I asked you the question earlier was Native Title and TOSA fit for purpose here in Victoria, and I think you are starting to unpack that here now, it's really important. Yeah, because our job is here to, you know, look at systematic barriers and make recommendations for change, and hopefully they will be picked up through the Treaty process. So are there any sort of further observations you'd like to make about those limitations to both those processes?

UNCLE GARY MURRAY: Well, the State collects revenue, billions of dollars in revenue from rates and grazing licences as we learnt from one of the witnesses the other week. So they are collecting the revenue, so we don't have to collect it. All we have got to do is negotiate a percentage of that revenue, it gets invested, it's a bit like the ILC, something like a 1.4 billion-dollar investment fund, they live off the interest of about \$50 million a year to do their land acquisitions and pay for their admin. The New South Wales Land Mines Act had a sunset clause of 15 years, again it was \$1.4 billion they collected. The State Land Council and the local councils live off that. So we are not reinventing the wheel there either. So what is the formula here? We have got to start getting our heads around that.

Now, I understand there was a review of the TOSA Act in 2020, I don't know whether you have read that, but that was looking at ways of boosting the revenue income and grants and that in TOSA deals, because it is too low. The first deal in the TOSA was 2013 by Dja Dja Wurrung. It was a \$12 million-dollar package, \$12 million, one of the reasons why we opposed it. The latest one is Wotjobaluk and I think that is about 50 million plus, a big difference, that is '23 - 2023 figures, so is it getting better or are we kidding ourselves about viability? It may mean that we have got to go higher on that revenue thing.

MR GOODWIN: And something - thinking about the Warm Springs, the legal basis for the exercise of power for Indian tribes is an early recognition of a nation-to-nation relationship between the United States and Indian tribes under their Constitutional Law and the concept of a shared or dual sovereignty. You have mentioned some of those words just now and in describing Warm Springs. On that basis, have you reflected about, at least in a cultural or traditional sense, what needs

to happen to our legal frameworks to be able to build that type of relationship, if it is one that is - one that's desired?

5 **UNCLE GARY MURRAY:** There are two legal frameworks that we have to consider. The first one is, we are corralled into corporate existence, that is, we have got to set up corporations, CATSI Act, Associations Act in Victoria, the Co-ops Act and so on. That is fine, but I think we have to start minimising the corporate part. What we have got to do - the main part is a sovereign entity. What is a sovereign
10 entity? Who owns it, how do we manage it and so on. Sovereign entity to me - and we are trying to do this along the river in the north-east as well as Wamba, we have a sovereign tribal entity, and that is mainly the Nerik Nerik that we call them, the head men and head women, that feeds into the corporate entity which we minimise - we might put on a lawyer accountant and five trusted TOs, they acquit and audit all the grants and guarantee the assets and the rest of it, we might set up a trust to look over
15 the assets, but the sovereign entity is everybody's in it, it is the tribal council that I saw in America. That sovereign entity has a set of law and rules and we are all bound by them. So white fellas would say, "No, that is self-regulation, that could be bad news given what companies do and the rest of it."

20 I do say, no, culturally, we don't need recognition to be sovereign. We don't need recognition for a corporate entity or a TOSA or Native Title Act. It's up to each nation to work out how they are going to, in a practical sense, exert their rights to sovereignty in some form.

25 **MR GOODWIN:** Going back to a question that Commissioner Lovett asked around some of the legal frameworks that have been created to attempt to deliver land justice, thinking back to 1992 and the handing down of the Mabo decision and the passage of the Native Title Act the next year, what was your reaction to the Mabo decision at that time, and what did you think about both the opportunities and
30 challenges it presented for Victorian Traditional Owners?

UNCLE GARY MURRAY: I was at law school at Melbourne Uni that time, so it was a bit of a hot topic. What does Mabo do for us? Well, that case was about Torres Strait Islanders. While it sets a precedent and got rid of things like terra nullius, and
35 that's good, but what else has it done for us? I think you have got to look at Mabo in the context of the Yorta Yorta case. We all know that Yorta Yorta failed 100 per cent in terms of trying to prove their case, even though they were the first ones off the cab rank, I think, at the time. And it was interesting to watch how it developed over time with all the lateral violence and all the legal stuff that was going on, and, you know,
40 big mobs of white people turning up in little halls and really saying, "Well, they are going to take our front yard, our backyard, and our dog and our cat." Which is not true, because Native Title is only subject to Crown land, and it is only a right to hunt, fish and gather.

45 So we looked at Yorta Yorta and we think, well, that one failed, and out of any case that was before the Native Title process, one would have thought Yorta Yorta would have got up, but when you have a close look at it, you could see why it lost, and it

wasn't just about the tide of history, it was also about the confident research that was done in terms of identifying boundaries and ancestors and the rest of it, that was one of the big failures in it. But the good news is, after what Minister Hutchins said the other week about the section 13 variation under the Native Title Act, we can go back,

5 I am speaking as a Yorta Yorta person, also as a Barap person as well, because Barap was impacted by that negative determination along with the Ngurai-illum group and the Waywuru group, we can go back and unravel that case and try to get a positive determination for Yorta Yorta and also give the Country back to the Ngurai-illum and the Barap and the Waywuru, if we do it honestly with truth and good evidence.

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I think - it has been there 26 years, that strategy. Why didn't Yorta Yorta do it? They can still do it. Call a clan group meeting and authorise an application in the Federal Court. I would be interested in your comments, your Honour. I am told there have been eight successful section 13 applications across Australia. So again, we are not

15 reinventing the wheel. But if people are talking about - and its constant - the trauma that come out of that Olney judgment, if you want to fix it, get real, call a clan group meeting, and authorise a section 13 application and run your case.

MR GOODWIN: Commissioners, I would propose to take a short break at this

20 moment, if that is convenient, I am in the Commissioners' hands, for 10 or 15 minutes.

COMMISSIONER LOVETT: Yes. Any questions before we go from anyone? Okay. So let's resume at 12.30.

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MR GOODWIN: Thank you.

COMMISSIONER LOVETT: Thank you, Counsel.

30 **<THE HEARING ADJOURNED AT 12.14 PM**

<THE HEARING RESUMED AT 12.33 PM

COMMISSIONER LOVETT: The hearing of the Yoorrook Justice Commission is

35 now resumed. Thank you, Counsel.

MR GOODWIN: Thank you, Commissioners. Mr Murray, you mentioned prior to the break the importance of access to archives for Victorian Traditional Owners, and the - if I can summarise, the fact that so much research has been done about us but

40 not by us. Why do you think it's important to have - for Aboriginal Traditional Owners in Victoria to have access to their own data and the creation of that data about them?

UNCLE GARY MURRAY: In 1999, I did a meeting in (indistinct) Wotjobaluk

45 Country and I had the privilege of going out, probably for the first time, to Ebenezer Mission. And I was on a path to doing research. And I was looking for Pastor Sir Doug Nicholls' grandmother Augusta Robertson. I had her death certificate and I had

her marriage certificate. In 1872, she got married to (indistinct) Jack Logan down at Ebenezer. So I knew she was in that area. And when I went to Ebenezer and physically had a look, walked around the cemetery and couldn't find her grave, until there was a bush - it was a hot day, and the wind blew up, and part of that bush and
5 there was a headstone broken in nine fragments and it was her, and it was just simply Augusta on the broken headstone, then it had a bit of a Biblical verse, and it was 1886 that she died. Now, from that point, part of the research stuff I was doing, you know, there's always been a problem getting birth, death and marriage records because it costs families a lot of money to do that, to get historical references like
10 Barwick collection from the Public Records Office or State Library or even on the Native Title body was always difficult. So you fast forward now, I have been negotiating with Vic Uni, especially Professor Gary Foley, about his website or archive. Basically he is asking individuals and groups to hand their archives to Vic Uni, he will archive them and store the physical copies as well.

15
It is a good idea and I am still thinking my way through it. But we need to own the archives facility, and there are all sorts of options, a satellite strategy out to existing facilities and ones that are going to be built. It is no longer just boomerangs on a wall in a cultural centre; it is more than that. You can run online higher ed courses in law
20 degrees and get two or three people to do that over three years in that facility. You can do your archives there, your photos, audiovisuals, all that stuff, so a young kid can go in there and have a look, with whatever conditions we want to place on those archives.

25 So the Foley example needs to grow, it needs to be a treaty in archives that expand the concept of archives, locally, regional, statewide, nationally and even internationally. That is the concept we are supporting.

30 **MR GOODWIN:** Is that related to the movement for data sovereignty for First Peoples?

UNCLE GARY MURRAY: Data sovereignty is part of that, yeah, of course it is. Who owns it? Who owns the headstone that I saw of my great-grandmother? I am assuming that the cemetery owns it. Cemeteries are another archive thing, right,
35 because when you look at cemetery records, you will see stuff on headstones, for example the Coranderrk one where it has all the beautiful names up on that plaque up there, they tell you a story and that is part of the archive stuff. And cemeteries, in a different way, it is another issue, because we have never had a strategy with cemeteries, how we fix them up. They need to be culturally audited and properly
40 funded, and there should be proper landscaping and facilities in a cemetery, whether it is Cummeragunja on the New South Wales side or (indistinct) or Lake Tyers in East Gippsland or whether it is Coranderrk with 350 burials up there, (indistinct) and Lake Condah. They are archives that we are not looking after in a good sense. We need to do something about that and I think we need to work a strategic plan out.

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All these cemeteries and - the extension of that, of course, the funerals of our people. Everybody knows that in 2024, it is going to cost you about 15 grand to bury

somebody, to get a plot and bury them. Cremation might be a little bit less. But what are we doing about that part? That causes a lot of stress and trauma on families, particularly poor families and I don't think we have got enough funeral fund services out there. You know, we have got an Aboriginal funeral service that will bury you,
 5 but you get charged a fee. I buried my brother about two weeks ago and it cost me about \$800 just to dig the burial pit, and that goes to the grave digger in his little thing.

10 So this whole thing about cemeteries and death and funerals, we need to start talking about it, because it is causing trauma out there for a lot of people, and, you know, those ancestors need to be respected and recognised. The old man had a saying, "Respect the dead and respect the living, and also speak for the dead because they are not here." This is part of who I am. I will speak for Margaret Gardiner who only
 15 died in 2021 - August 2022. So she would agree with a lot of stuff that I want to talk about. But she would also disagree, right, so I respect that, but she is not here, so who is going to speak for her? And she is just one example.

MR GOODWIN: One of your quotes in your submission is that:

20 "The stronger symbol of our land ownership and occupation is where we bury our dead and where our ancestors rest."

25 So I take it from that that when you talk about cemeteries as archives, you are also talking about ownership and connection to Country that is ongoing, and so it is connected to land justice as well.

UNCLE GARY MURRAY: It is, and I think that - that particular term similar to land ownership is where you bury dead. Think about that. All our people on Country are buried on Country out there somewhere, and essentially some developer is going
 30 to come along and dig them up like they did at Murray Downs Golf and Country Club and other development sites. And we've got to have a good hard look at that, because this Murray Downs Golf and Country Club, and I have got to talk about it, because the latest strategy they've got, they are building a housing subdivision, virtually a suburb of Swan Hill but on the New South Wales side, right?
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They are going to do another 150 houses, right next door to the bowling green that - there's four bowling greens and we took one off them because there was five burials including a mother and kids and that. And what they did then was they turned that bowling green into a car park. So when you go there and you go and have dinner
 40 there, whatever, like the Heritage Council were going to do, you will park your car on a burial site as the car park. Now they are going to build another 100-plus houses virtually 40 yards from it, on the top of a sand dune. If you know anything about a sand dune, particularly on the New South Wales side of the river, there could be potentially 10,000 burials along that huge sand dune that goes on the New South
 45 Wales side of the Murray River.

So the prospects of digging up more at Murray Downs is real. And that's what happens when you go to sandy areas. Because we obviously didn't have shovels or shoes, so we went to the soft spots with our dead and we put them down three or four feet and Murray Downs was one of those places where 17 of our ancestors were
 5 desecrated by a scraper - a scraper is a big thing that goes along and scrapes bit by bit. They pick up a burial and they just cut it to pieces. We even found a couple of cremations on that site, which was pretty unusual to find cremations, ancient ones, but this is the stuff that goes on all the time. Whilst we have got the Cultural Heritage Act there, and there is another one in New South Wales, they are pretty weak.

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COMMISSIONER LOVETT: Can I just ask, particularly in the context of the Murray Downs there, what years are we talking? What year around about?

UNCLE GARY MURRAY: December 6, 1988 is when the first ones were
 15 uncovered, and right through the next 12 months the rest were uncovered and we took them on in protest and the Federal Court and all that sort of stuff. But the farmers and all the landed gentry borrowed 7.5 million from the ANZ Bank to do this development. They thought it was going to bring a lot of wealth to the town and all the rest of it. And in the end when they started scraping it - turning it into two
 20 18-hole golf courses with a big country club on the top of the sand dune, and the burials go from the Murray River up the sand dune to the top part. They picked the top part because architecturally, that is the aesthetic part up the top looking down on the river.

25 On the top of that sand dune were more burials. In fact, when Telstra put the cables in, they made this huge trench, they cut through - cut a burial in half by doing that. These were the absolutely repugnant things that people do to our people. No respect for the dead and no respect for the living.

30 **COMMISSIONER LOVETT:** Can you share any insights about the advocacy of mob during that time to, you know, say what business has happened there? To resist that, I suppose is what I am trying to say?

UNCLE GARY MURRAY: There was resistance. Like, our friend Peter Walsh was
 35 an MP at that point. He had an office in Campbell Street, Swan Hill. We had a huge rally in the main street a couple of hundred people turned up. They stopped outside of his office, he got a bit of a serve, we marched to Murray Downs. You can't stop this stuff in New South Wales, it goes ahead. Very unusual to stop something like that, they let the development go ahead. They are still going ahead. They are going to
 40 do stage 3 now. It is a whole suburb of Swan Hill. So, you know, they are going to make development take precedence over cultural heritage preservation and protection, like economic development.

45 By the way, they promise us jobs and all this sort of stuff in this new project, no one worked there. Nobody got jobs out of it. It was economic development for white people, not for black people.

COMMISSIONER LOVETT: I just want to reiterate the point, this is 1988, so not 100 years ago.

5 **UNCLE GARY MURRAY:** No '88 to 1991. My Dad passed away 1 June 1989, and he turn up in a hard hat, blue hard hat with a land rights sticker on it, and he would round all those developers up. He had a couple of meetings with them and he gave it to them pretty bad. So he was the senior Elder. He passed away on 1 June and, you know, the unfortunate thing was that the Commonwealth reported out to do the assessment on the heritage application and he was not there to do nothing, he
10 couldn't (indistinct) accept us.

MR GOODWIN: Because that was when there was a specific chapter of the Commonwealth legislation to Victoria.

15 **UNCLE GARY MURRAY:** Yes.

MR GOODWIN: And you mentioned that the Aboriginal Heritage Act which was essentially passed here in 2006 has pretty weak - in your words, pretty weak protections. What needs to change in the Heritage Act to bolster protection for
20 Aboriginal cultural heritage?

UNCLE GARY MURRAY: Well, the case study here is very current. That's Tyrrell, Lake Tyrrell application to the Commonwealth to preserve and protect Lake Tyrrell. It is tangible and intangible cultural heritage. It's well documented
25 astronomy, land, water, people stories from the 1840s from a fella by the name of - he was a settler, DW Stanbridge, who delivered a paper to the Royal Society of Victoria in the 1850s, so he was the start of it, then the late John Morrison, Dr John Morrison, did his PhD on Lake Tyrrell.

30 Lake Tyrrell is a huge salt lake, an ancient lake that goes back for millions of years, it has four, five hundred registered sites on it. The local town ran what they called the Mallee rally, huge motorised sand dune buggies. Had 100 of them going around this lake. In the process, they desecrated sites and destroyed sites over a 47-year period, until three years ago. We stopped them. Then it was a conservation management plan
35 done by the State, and we think that the Mallee rally is dead but people still want to bring it back, but the Local Government, the shire and local town, all that sort of stuff.

40 The usual stuff. We want to try and boost their economy by building a multi-purpose cultural plan planetarium concept where we can link that story to the lake and the astronomy and boost the economy for the town and international tourists, domestic tourists and the rest of it. Good concept, it'd bring in millions of dollars for the economy, but no, non-Aboriginal people aren't really interested, hey. They want to do a venue for a rock concert on the shores of the lake, 30,000 people can fly in on a
45 helicopter pad, all that sort of stuff. Another guy is - what was the other guy doing, salt mining, salt mining on the Lake Tyrrell. This is the lake here, goes back to 1896.

MR GOODWIN: For the benefit of the transcript, we have up there a photo of Lake Tyrrell and connection to the stars in the sky. So thank you, Mr Murray, if you can take us to that photo and the cultural significance of its connection to Aboriginal astrology.

5

UNCLE GARY MURRAY: People go to that lake and they see that, you walk out into the water you don't though if you are in the galaxy or in the water, except its wet, of course. So it is an amazing place. It has that tangible, intangible cultural heritage. It needs to be preserved, protected and showcased. That is what we are trying to do, whereas the locals want the Mallee rally back, the dune buggies, and they still want to continue the salt mining, the salt miners want to talk to us, they haven't talked to us in 100 years, now they want to talk to us, because we have the section 9, section 10, Commonwealth Aboriginal Heritage Act application in, we are asking the Commonwealth Minister to issue a permanent deck on the whole lake. She might, but she might not. But she did approve one application somewhere else the other week as we know. But this one is really important.

The Heritage Council has been very silent about their position, very silent. We are going to ask them to support the application and to make sure that the conservation management claim that was done by Dr Vincent Clarke, the recommendations must be implemented to protect that site. There are burials around there as well as artifacts, scatters, all that sort of stuff. But the intangible part is the most important part. As you can see by that, this has been recorded on an etched bark by the local people in that lake back in the 18th century. And that etched bark, we've gone and seen for the first time - well, the second time for me, the first for everyone else - sitting in the museum in Victoria the same as the two etched bark and the emu headdress sitting in the British museum.

Now, the argument in these cases is if you want them back, where are you going to put them? Have you got a climate-controlled facility? Well, we haven't, have we? There is no building on this lake here and there is no building on the Boort lake. This concept of building coming out of the Warm Springs Reservation, why can't we have a planetarium multi-purpose resort on that lake in order to showcase what is going there from our perspective, and that will boost the local economies to the small town. It will bring a lot more than the Mallee rally which was a quarter of the million for the weekend they have, not much money, but they reckon it is. We reckon we can bring millions into it, that is an argument we will have to roll this thing out.

We are interested in putting in a Native Title claim around four or five nations around that lake a Registered Aboriginal Party application and a treaty, that is another way in a medium term, long term to protect it. I don't know where the Commonwealth is going to go with this, but it is currently before the Minister. I will hand up stuff on (indistinct) at some point. This is significant tangible, intangible place and objects, and it's worthy of World Heritage Listing the same as Lake Condah in a different way. So Tyrrell is one case study.

45

- The other case study is Lake Boort. Biggest scar tree place in Australia is around that lake. 500 sites have been recorded, namely scar trees, but burials have been put there in ancient times and more contemporary times. We've got a non-Aboriginal person, a good friend of mine, Mr Paul Horan and (indistinct). They built on their private land on the lake a keeping place. Because what happened is all these farmers are handing in artefacts, you know, rock stuff, grinding stones and all sorts of stuff coming in from farmers, which is a really good thing, and we need to fund that place to protect it and preserve it and showcase it.
- 10 You don't have to go to Alice Springs to see cultural heritage; you can go to Boort or Tyrrell, and you will get a different experience than Lake Condah or even the Barmah Forest in Yorta Yorta Country. But the RAP has not provided support for the Yanbara clan to preserve and protect and showcase this place. We had - in the last 20 years, we have tried to get a place built, and it hasn't happened. And I hold the Dja
- 15 Dja Wurrung Clans Aboriginal Corporation responsible for their apathetic approach to protecting what I see as the cultural jewel in the Dja Dja Wurrung's crown, and I think we are going to have that out at the AGM coming up in November. It is time we fix it. You know, Dja Dja Wurrung seem to get a lot of funding and they've got a yabbie farm, and they've got a - what is the other thing, kangaroo grass property,
- 20 they've got Mount Barker bought by the ILC, they are currently building a huge cultural centre in the south part of Bendigo, multi-million-dollar job. But nothing is going into the clan's aspirations. This is a significant place, if we are ever going to get the barks back, in the British museum, they were insured by the British museum, each bark, 2.5 million, back in 2004 when they came to the Melbourne Museum. So
- 25 economically, they are worth a fortune. We won't get them back unless we have to build it. They have to come home, not to Bendigo; they've got to come home to Boort. That's where they come from, those trees around the lake, my ancestors' Country.
- 30 **COMMISSIONER LOVETT:** Can I ask in your words, why is Aboriginal cultural heritage so important to our people?

UNCLE GARY MURRAY: Why is the air you breathe? You know, it is important, tangible terms and intangible terms. You have got to know the stories. This is not

35 around Santa Claus or the Easter bunny. This is us. This is us, and it's biodiversity, it's cultural heritage, it's lore, it's music, it's art. The Boort barks, there's one where there is an emu headdress. They put it on with ceremony and dance, and the woman would get cloak like this, sit on the ground, wrap them over the knees, they have little sticks, and beat the drum. And the men would dance and do ceremony.

40 This is - that's our stuff. It doesn't come from Japan or Italy or England. This is stuff that drives home the point that we are the first ones here and always will be. It is our lore, it's - it's everything, and it is written in the sky in the stars and the water and the land and the people, the people that were here before us, the people that are here

45 now, and the people that will be here in the future.

COMMISSIONER LOVETT: And why is it so important to, like, all non-Aboriginal people, they understand this, like the importance of it to us, but also to our history but also our future?

5 **UNCLE GARY MURRAY:** Well, if you look at the case study in Lake Tyrrell, the sea lake, obviously a sea lake, non-Aboriginal people are worried about the economics, well, we have got the solution for that by doing the astronomy facility, right, and that will bring - boost the economy. We have got to drive that message home to them that is the way to go. And they've got to get rid of this sort of, well, "I am a redneck and I can't do this." They can do it. We also have good people who are
10 spiritual who support the stuff, and I don't think we should not recognise that. I think we have got to educate non-Aboriginal people and our own. Not many of our people know about this. Not many people know. They don't know about WH Stanbridge and the document that he wrote, they don't know about Dr John Morrison's contemporary
15 PhD document either.

COMMISSIONER LOVETT: Do you have any advice for non-Aboriginal people here in Victoria about how they can support the importance of Aboriginal cultural heritage to our people?

20 **UNCLE GARY MURRAY:** Well, I think it's not just benefiting Traditional Owners' cultural heritage, right? You only have to look at the register for archaeologists that do tender CHMPs, right? 99 per cent of them are non-Aboriginal people. They are working in our industry. If you knock the industry off, you knock
25 off those non-Aboriginal workers who are probably paying mortgages and boosting the economy up and all this sort of stuff. So, you know, I don't think people who oppose this sort of stuff understand that. Like, who is going to build the planetarium? We haven't got the skills, the architects, the builders, the plumbers and electricians. That is going to come from the local white community. That's boosting their
30 economy up.

So I think that is the message we have to get across to everyone in Victoria that Treaty - we have a whole heap of industries, cultural heritage, Native Title, white lawyers, white researchers, all that sort of stuff and some are good, some are bad, but
35 they are in our industry and we look after them and we pay for them, but my guess is that is multi-millions of dollars going out of our economy, the black economy, into the white economy.

40 **COMMISSIONER WALTER:** I have to pick up here a Sydney Morning Herald article in which you're pictured with the Boort barks back in 2015, so this is an ongoing - how close is there to getting them back? Just amazing.

45 **UNCLE GARY MURRAY:** I suppose I am hoping what comes out of the Royal Commission is that we can talk to our agencies - even the Dja Dja Wurrung Corporation, but the CEO went overseas, I think he went to Belgium, might have went to England as well, but there was no negotiation last year when he went over, with the British Museum about returning those three significant artefacts, the emu

headdress and the two etched barks. I find that strange and I think we have got to fix that. That is an internal thing we have got to do, but the State, Heritage Council, what are they doing with negotiating with the British Museum? They are aware of it we don't have the resources at the Yung Balug clan we are not funded; all the money is
 5 in Bendigo with the Corporation. But we will be putting pressure on the Corporation. Don't worry about that; that is coming.

COMMISSIONER LOVETT: I just want to come back to my question before about the importance of all Victorians, and you spoke about the ecosystem of people
 10 working in Aboriginal Affairs, but what about just everyday people living throughout Victoria who aren't really engaged in Aboriginal Affairs or know much about our fight, our advocacy and resistance. How is it important to them that they understand and see you know our culture and our people and our contribution?

UNCLE GARY MURRAY: Just like many of them love our Indigenous footballers, right, that is widespread, right through the AFL. Why do people love footballers? Because they can identify with them, and, you know, they are comfortable, it is their club. This - this is a similar thing. Be proud of the fact that we have got this culture,
 15 this culturally significant tangible and intangible cultural heritage, in your local community, in your regional community, but in your state and nationally. You know, be proud of Uluru but also be proud of Tyrrell, be proud of Boort. Because where you live in those areas, that is yours. I don't live there. They do.

They've got to preserve and protect it too. You go overseas, you can promote this
 25 stuff at a family level or whatever level you want to talk about. It is shared. We are sharing it, right. We are sharing it. We are not stopping people to go out on that lake. We want them to go out on that lake and feel the stars and astronomy and connection to that lake and our people. People lived there in the 18th century and going right back to 120,000 years. That's got to be worth something to a non-Aboriginal person.
 30 They are walking on sacred ground there and sacred water. Did I answer your question?

COMMISSIONER LOVETT: Thank you.

MR GOODWIN: Speaking of Lake Boort, you have aspirations to build a cultural education and tourism centre there. If we can bring up the Lake Boort
 35 multi-functional cultural economic facility presentation, and in particular if we can go to page 8, I think it is, of that those -

UNCLE GARY MURRAY: Those aren't dots but spots of an eastern quoll. That is the totem of the Yung Balug clan, the quoll with the spots, and we are trying to bring that totem back as well. This is a big lake. This is where most of the scar trees and
 40 burial grounds are around that. The private museum that my friend manages is to the north. He is right on the top northern bank. The little lake Boort is the town's drinking water. The big lake is fed by the creek. The first mud and post dam was
 45 built at that creek into that lake, and it was done by our ancestors. There is documented evidence about that and all that sort of stuff. 400 plus sites around that

big lake. It's not always got water in it, but we can control that and bring water back, but lots of red gums, dead ones and live ones, around it.

5 But it is different to Lake Condah, different to Barmah, and different to Gunaikurnai stuff. This is significant. Significant cultural objects need to be preserved if the State won't do it and the Dja Dja Wurrung won't do it, we have to go to the Commonwealth as a last resort and try to get a permanent deck. We just got rid of the duck shooters this year. They were on there, but they are gone from that lake. But there are lots of other waterways around that, that are Traditional Owners' business and they've got duck shooting on it, and duck shooters are pretty bad news. A scar tree could fall over and they knock it over and they use it for firewood. You know. 10 Well, we want to build something between the two lakes. It is a multi-purpose cultural heritage planetarium-type concept. Every Traditional Owner has got stars, we all know that, let's build them. How do we relate to those stars and relate it to the water and the people and the land. That is what has come out of Tyrrell. Tyrrell is a model for every other group. 15

MR GOODWIN: You have already partly answered this question in terms of having a physical space to bring back cultural heritage items and to have a space that educates and teaches both Traditional Owners and non-Traditional Owner Victorians, but just generally, why are such cultural centres and precincts, as you have described them in your submission and today, important? 20

UNCLE GARY MURRAY: Well, they're significant to showcasing and preserving our cultural heritage. It's economics as well, because it creates jobs and training. It brings back our cultural self-esteem. We have got a site out here at Glenroy, it used to be the code school, Aboriginal school, it is on 13 acres, used to be my old Glenroy High School where me and my brothers and sisters went. We had a bit of a historical relationship with it because it was where Mum and Dad lived. 25

30 Those 13 acres got reduced to six. We fought for the six acres from 2010 with the late Margaret Gardiner and other Elders from Wurundjeri Woi Wurrung as well as - the local community was strong on protecting the six acres, because the State was going to sell it for housing development. I had a friend who owned a Metricon home, he's no longer with us, he reckoned he would put 34 houses on it, six acres, two storey. But in the end we won it. The State Education Department leased it to the Merri-bek City Council who then sublet it to Wurundjeri Woi Wurrung. 35

40 Where we are at now is, we have had a feasibility study down done, cost estimates done up to \$70 million to build what we are thinking, and we have had the architectural concepts done. So the Glenroy site should cater for potentially 3,000 Traditional Owners off Country that live in Merri-bek and Hume Council areas with health services and education services as well as a sports academy and all the other stuff that goes with it. That is the plan for that Glenroy site, six acres, 13 Ks from Parliament House, and we've been battling that for 11 years. All we need is the State 45 to divest the land title to a proper inclusive Woi Wurrung group and then fund the

design and construction of it, and that will - that will be an urban version of what we are trying to do in the country the first time.

5 We can bring kids into that site like a Camp Jungai thing where the kids stay in a residence for about three days. They camp out. We are building treehouses into the gum trees, we have heaps of gum trees, parrots and cockies and all of sort of stuff sitting there. We are not going to disturb that, we will build around it. That is an interesting concept that Merri-bek Council is backing. Merri-bek is interested in putting in 10 per cent of that \$7 million. I hope they stick to that. But that is a carrot
10 that needs to be dangled to get the State to divest the title, put some money into it, just like they have done elsewhere with Dja Dja Wurrung and what not, and let's get it moving. That is the bottom line on it. It's been too long.

15 **MR GOODWIN:** My final questions are about what you talked about being the reconstruction phase of the movement today, and you are currently a member of the First Peoples' Assembly of Victoria, and I just wanted to hear about your reflections on the operation of the organisation and its part in the reconstruction phase.

20 **UNCLE GARY MURRAY:** This is my daughter here; she is sitting over here.

MR GOODWIN: Specifically on the quality of the leadership.

25 **UNCLE GARY MURRAY:** Well, the first thing I've got to say is confirmation of Aboriginality and sole original ownership is a real issue that all of us have to deal with. We are fed up with non-Traditional Owners coming on to our Country, working our sites and getting huge dollars and then getting grants from the State and they say they are Dhudhuroa, and they are not, they are not Dhudhuroa, case study up there, and we get these issues about non-Aboriginal people wanting to be Aboriginal people, and everybody thinks it's too hard. It is not too hard if a lawyer
30 says he is a lawyer when he is not, he will go to jail, the same thing with a doctor. If somebody is saying they are Aboriginal and they are not, if somebody is saying they are a Traditional Owner from the site they live on, the area they live on for 10 seconds, 40 seconds, then it's fraud. It's financial advantage by deception if you are getting benefits.

35 And I don't understand why we haven't prosecuted people who do that under the Victorian Criminal Code or the Federal Criminal Code. Because if you say you are an Aboriginal, you can get an Indigenous Business Australian Housing Loan up to 800,000 with low interest, or you can get a housing board property on a low rental
40 rate, or you can get a job in a university or you can get a job in an organisation because you are saying you are Aboriginal and you are getting those benefits when you are not.

45 Now, to me that is morally bankrupt. To me I reckon the criminal codes need to be tested out on that, and I really think we have got to have a good look at it, because the best way to confirm your Aboriginality is - I am floating this out as one of my recommendations on page 10 or 11, that has to be a register of all Traditional Owners

5 who want to get benefits from Treaty, RAPs or whatever, that register should probably take the form of the electoral roll of the First Peoples' Assembly, that would boost the electoral roll and the Assembly from about seven or eight thousand, potentially maximum of 30,000, about 30,000 voters out there over the page of 15 or 16.

10 We need to get them involved and get them voting on stuff. They've got to vote their members in, and they've got to vote for these treaties and support the events and all the strategies that the Assembly is trying to do with the Treaty Authority and Self-Determination Fund and all the rest of it. Have I answered your question yet?

MR GOODWIN: Speaking of treaty making, then, what are your aspirations for treaty making in the state?

15 **UNCLE GARY MURRAY:** Treaty, if you read the book there, Counsel, the coloured one, is simply an agreement in a book with chapters. The first chapter would be addressing the question of sovereignty, the second chapter could be about dispersal, deculturalisation and dispossession. The third chapter could be about reparations and compensation, reparations, ongoing compensation, compensation is 20 one-off. Then we go to all the other chapters, kids in out-of-home care, Stolen Gens, what do we want to do with all those issues? How are we going to achieve it in Treaty? We have got a few ideas floating in the last few years with the Assembly.

25 I think the Assembly is going great guns. I think they are on the right track but we need to start writing those treaties now. It is all right to talk about we will start with Statewide treaties and health and education. That will be interesting in its own right; hopefully that will get done this year or early next year. But what does a nation and its clans and its family groups want? Who is going to write those treaties up? We 30 should all be having family group meetings and saying, well, "What's in a Treaty agreement for our family? Do we want better housing, new housing? Do we want jobs? Do we want better scholarships and education? Do we want to move back to Country to a house and a job in a National Park that we own?"

35 These are the 24, 25 issues that every family group in this state needs to start thinking about and addressing. Do not sit on a fence. Don't sit on a fence, because this is your time to get a treaty or treaties done, nation by nation, clan by clan, family group by family group, and obviously the Statewide treaties are another aspect of it in the health and education. And the whole thing is about increasing the quality of 40 life and living standards of our people. No more Closing the Gap negative outcomes, no more incarceration rates, no more kids in out-of-home care and everything else that's negative in every community in this state.

COMMISSIONER LOVETT: Can I jump in?

45 **MR GOODWIN:** Those were my questions.

COMMISSIONER LOVETT: Okay, thank you. How - we're talking about treaties and multiple treaties. I just want to fast forward in your sort of view. How does Treaty and multiple treaties benefit all Victorians?

5 **UNCLE GARY MURRAY:** Well, if you - if the economists do the right economic modelling, we're going to save taxpayers multi-millions of dollars by keeping people, for example, out of jail, off drugs, alcohol, family violence stuff, we are going to give people jobs instead of Centrelink, multi-million dollars in Centrelink benefits. Somebody gave me some data on that, and it was supposedly 6,000 of us on aged
10 pensions, just, like, five years ago. Well, what is happening there with all those pensioners? Are they surviving with higher living costs and all the rest of it? We have got to try and achieve a lot of things in this Treaty agreement making stuff and we have got to get serious, 110 per cent serious. I don't think I have answered your question.

15

COMMISSIONER LOVETT: I think you started to - I think you started. If you just wanted to elaborate on all Victorians benefit when we sign a Treaty and multi-treaties locally, what does it mean for everyone, what does a shared future look like, is another way -

20

UNCLE GARY MURRAY: You imagine a multi-purpose facility on that Lake Boort or multi-purpose on Lake Tyrrell. The economy is going to be, firstly, boosted, that is one thing but the people are going to be walking around 10 foot taller, particularly white people because they haven't seen that sort of stuff and they would
25 appreciate the economics of it, but they will take pride in it.

It was the same thing what happened when we went to Lake Tyers when we did the first Camp Jungai programs, 1968 to about 1970, the Minister for Aboriginal Affairs built the acres at Camp Jungai and they turned it into a program. The locals were
30 very toey about blackfellas coming into the Rubicon Valley with 57 hectares funded by the State and running these camps. They thought oh, they will be blacks camps. They weren't. They were cultural education camps, orientation camps, all sorts of camps, for kids and youth and adults all the rest of it. In the end, the white community just loved that place because they also benefitted. Because when we fed
35 the kids we had to get the meat from the local butcher, we had to get the veggies from the local fruiterer. And we took the kids out on a waterskiing machine in Thornton, and the guy that was running the water ski machine, he was busy for 40 weeks in a year, because the camp was booked out for 40 weeks, black kids and white kids. And then we would take them horse riding. A guy named Robbie Rob -
40 he's probably passed away now, because he was an old fella - he was a horseman and so was his daughter, they had this horse-riding school three kilometres from the Camp Jungai. We would take them out there as part of the activities. They got paid for it. We took kids out on waterskiing with the local waterskier out on Lake Eildon.

45 So once you do that - and that is my experience. Camp Jungai, it was not Warm Springs, but Camp Jungai is a transferable concept. It could go on Glenroy in an urban environment, or it could go out on this lake, and we would focus on kids in

primary schools, secondary schools, tertiary, local public servants, whatever. And when you do that, you educate them, they get more positive about black people. That's the lesson I learnt about Camp Jungai. Unfortunately, that Camp Jungai is not the same model now since it's been given to Taungurung.

5

COMMISSIONER LOVETT: You shared some views about the Traditional Owner groups, particularly around what they are not doing. I wanted to ask you a question about some of the key achievements they have been able to achieve in navigating the colonial system.

10

UNCLE GARY MURRAY: Well, the big thing is, they continue to exist in different forms, going through reconstructions and doing your Native Title deal and doing your TOSA deal and doing the RAP deal, that's all good. It will bring benefits to a lot of us. I think that's proven. But we can't leave nobody behind like we have. We have excluded nine, 10 nations from all these processes that could benefit everybody. Why did we do that? Why are we doing it like a Housing Commission waiting list, one at a time 13 years later. We should be hitting it to everybody, we should be hitting them all, and saying, right, "Get your RAP done. Get proactive."

15

20 In the old days in the 60s and the 70s, we were proactive. We would write a solution in a paddock. We didn't have to have an office and a meeting and all of that sort of stuff and put staff on. We don't do that no more. And I think the fact that those excluded nations haven't been properly assisted and funded to do the business that every other group is doing, and the fact that we have got this long-term waiting list, you know, why? Is that a wind-up sign?

25

COMMISSIONER LOVETT: No, I was asking if they had any questions.

UNCLE GARY MURRAY: Keep going.

30

MR GOODWIN: I don't have any questions. It was only if there was anything that you said you felt you -

UNCLE GARY MURRAY: I have about 23.

35

MR GOODWIN: What is that?

UNCLE GARY MURRAY: I have 23 recommendations here, page 10 and 11. I don't want to read them all out because we've basically touched them. I want to hand them up, I see from all the networks I have got state here as well as local. These solutions and recommendations are some of the issues that we talked about - and a few other new ones, I don't think - we don't need to discuss them. I will just hand them up and that fixes the day. You can all go home.

40

45 **MR GOODWIN:** Commissioners, I should tender the documents that were referred to. So that includes the submission and the photos of Lake Tyrrell. The RAP map, I think, is already been tendered. The photo of Warm Springs Indian reservation and

the Lake Boort multicultural economic facility presentation. There is also a number of other documents that Mr Murray's provided the Commission that will be tendered in due course.

5 **UNCLE GARY MURRAY:** And thank you very much for giving us a hearing, and to you, Counsel, as well. Thanks very much, and I look forward to the next step.

COMMISSIONER LOVETT: May I ask one more question, just one. Sorry everybody. No, I can ask the questions.

10

UNCLE GARY MURRAY: You can, that's right.

COMMISSIONER LOVETT: This is about, you know, being proud of yourself and your family and your contributions, but also our people's struggle and resistance in being able to achieve some of the things. I just wanted to ask you that about, like, you know, can you share some sentiments around how proud you are of where we're at as a people, given the continual barriers that you have articulated and other people have articulated through this hearing block around land injustice, but what did - can you share any thoughts around that?

20

UNCLE GARY MURRAY: How long have I got?

COMMISSIONER LOVETT: An important question.

25 **UNCLE GARY MURRAY:** Look, I'm - I have six sons and six daughters who I am absolutely proud of for the way their mothers have brought them up with the right values and all that sort of stuff. I am proud of the fact that they've taken a lead from their - myself and my grand - my father and my mother and my grandparents. They get involved, and I reckon that is really important that we get kids and grandkids
30 involved in the politics. Some gentle stuff, some hard stuff. They need to understand what's going on out there, and I think - when I think back on - right back, I think we come from a long line of warriors, kings and queens - that is not my words; that is words that describe my ancestors - and King Gerabong in Boort, he is a king, so the head men and head women in our lives, in the past and now, I think we are going
35 down the right path. I think we have to just keep educating people.

I am proud of the fact that to a point where I have actually started writing four books, which my kids hopefully will crack a whip on me to finish, and I will write a book about Rob Roy Stewart and Mary-Jane Andrews, the Dhudhuroa and Wamba
40 ancestors. I will write a book about Gerabong and Maddie, my Dja Dja Wurrung ancestors and Emma - Emma Kerr, who was also a Dja Dja Wurrung ancestor as well as Giddie Atkinson Cooper, Yorta Yorta ancestor, and Harriet Brown from the Wiradjuri group.

45 I know who they are now. My Dad didn't know who they all were. He knew about some of them and he was proud of that, because he had learnt that from his grandparents and his dad's side as well as his mum's side. And the fact that we have

got better access to research and that, you have got to build up that connection and I think our family is well connected. There ain't too many questions left for us to answer about who we are. We know who we are. We love being who we are, and we are strongly connected to the Dhudhuroa, the Wiradjuri, and the Yorta Yorta, Barap
 5 and Wamba, and Dja Dja Wurrung and Wergaia. And we will exert all our rights and interests across all that Country on behalf of our ancestors, because that is our cultural duty to our ancestors when they are not here.

10 We speak for the dead, bottom line, and we also speak for the living. And I want to make sure that that point is abundantly clear in everything I do before I go. I am not long on this planet. I just lost my brother. He was a bit older than me. He was 75; I am 73 this year. But it is all good, because I think we are going to leave it in good hands. I am looking forward to the next chapter, spiritually.

15 **MR GOODWIN:** A great note to end on.

UNCLE GARY MURRAY: Hello at home, Aunty Eleanor. Thank you.

20 **MR GOODWIN:** Thank you, Commissioners. I think we are free to adjourn and recommence at around 2 pm.

COMMISSIONER LOVETT: The Commission is now adjourned until 2 pm.

25 **UNCLE GARY MURRAY:** Thank you.

COMMISSIONER LOVETT: Thank you very much.

<THE HEARING ADJOURNED AT 1.28 PM

30 **<THE HEARING RESUMED AT 2.22 PM**

COMMISSIONER LOVETT: Yoorrook Justice Commission is now resumed. Thank you, Counsel.

35 **MR GOODWIN:** Good afternoon, Commissioners. We now have a panel of Traditional Owners who will give evidence before the Commission on cultural fire. So I will just first ask everyone to introduce themselves, and maybe starting with you, Matt. Please introduce yourself in the Commissioners in whatever cultural way that you would like to.

40 **MR SHANKS:** (Speaks Aboriginal language) I pay my respects to the Woi Wurrung, to Woi Wurrung Country, Woi Wurrung Elders, Woi Wurrung ancestors. My name is Matt Shanks. I am a man of the Taungurung nation, I am here representing my people today. Thanks for having us.

45 **MR GOODWIN:** Matt, do you undertake to tell the truth to this Justice Commission today?

MR SHANKS: I do.

MR GOODWIN: Katherine, if you could introduce yourself.

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MS MULLET: Thank you. Hello. I'm Katherine Mullet. I'm a Gunaikurnai (indistinct) woman. I come from Country and have walked Country. I am representing the Gunaikurnai Aboriginal Land and Water Corporation. I'm General Manager on Country there where I work within our operations, and I come with 10 years of experience in fire operations, and obviously from years of time, like my grandfather my father, walking on Country and I have come to speak about that today.

MR GOODWIN: Do you undertake to tell the truth to this Justice Commission 15 today?

MS MULLET: I do.

MR GOODWIN: John, if I can ask you to introduce yourself.

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MR CLARKE: My name is John Clarke. I am a Keeraywoorroong man from what is now south-west Victoria. I work at the Eastern Maar, which is working for my community. I am the general manager of biocultural landscapes, and obviously today 25 relative to Country and fire, the role that fire plays on Country, and the role that we play as a community in that.

MR GOODWIN: John, do you undertake to tell the truth to this Justice Commission today?

30 **MR CLARKE:** Yes.

MR GOODWIN: And, Mick, if you could introduce yourself to the Commission as well.

35 **MR BOURKE:** (Speaks Aboriginal language) I also like to thank the Woi Wurrung mob for having me on Country. I just said g'day. I am a proud Yorta Yorta speaking man, also Dja Dja Wurrung speaking man, as well as other multi-clans like Barapa, Taungurung, Woi Wurrung, yeah.

40 **MR GOODWIN:** Now, Matt, did you have anything else that you wanted to say by way of opening prior to the start of the panel?

MR SHANKS: I do, thanks. I just have a short statement. I absolutely refute the 45 accusations directed at the Taungurung nation by a member of the First Peoples' Assembly of Victoria in an earlier session of this Commission. I am deeply saddened and hurt the Yoorrook Justice Commission has facilitated lateral violence and created a culturally unsafe environment for Taungurung people. I won't be taking

questions about my statement, and I'm here to talk about the matter at hand, being cultural fire and our Country and obligations to Country.

5 **MR GOODWIN:** Thank you, Matt. So talking about that issue, and maybe I will start with you, given that we are talking about cultural fire today, how would you describe cultural fire to people, and particularly non-Aboriginal people that might be unfamiliar with that term?

10 **MR SHANKS:** That is a big yarn, and I think cultural fire - there is many words used, sort of English words but also Aboriginal words that Aboriginal people have utilised in a way to describe our obligations in a colonial environment, so it is actually a big conversation to describe cultural fire. It is our lore and it's our obligations to Country, it's our ceremonies and practice, it's healing, it's cleansing of Country and people. There is many things that it is not, and often it is kind of those
15 things that it's compared to, so it is quite often compared to sort of fuel reduction burns or those kind of, I guess, physical practices the State undertakes. And whilst it might have some of the same physical manifestations and some of the same outcomes, it also has a multitude of different outcomes, a multitude of different applications and responsibilities and relationships, and it - so, you know, there is the
20 physical practice, there is the undertaking of our lore and ceremony, and there is the absence of, you know, the physical application of fire. There is also the response to wildfire, to lightning strikes. These are all kind of ways we go about our kind of cultural fire practice. And these things have been explored by - by mob across what is now Australia, and in particular by mobs in Victoria, sort of most recently, and
25 formally in partnership with the State and ultimately culminating in the launch of the Victorian Traditional Owner Cultural Fire Strategy. There is a framework that describes a journey we can go on with the state to explore what cultural fire is, but it is a big yarn. Yeah.

30 **MR GOODWIN:** Well, in terms of that big yarn, did anybody else want to describe how they describe cultural fire in their own way?

MR BOURKE: I think the terminology used is "cultural fire", the way for maintain to understand what mob is doing on Country, there are other methods, like fire-stick
35 farming and things, but for the government agencies, when you are speaking of cultural fire, they think, oh yeah, it is Traditional Owners burning Country, where there are many other mechanisms we describe cultural fire, whatever it is for spiritual reasons, whatever it is for looking after Country. That is a practice that is been handed down for millennia.

40 **MR GOODWIN:** John, did you want to say anything as well?

MR CLARKE: It is interesting, I wrote myself a note I was speaking about cultural burning or burning. We have got to remember we are speaking about - the barometer
45 is not the Crown's bio-regime of the last 190 years on our Country at least. We are the barometer. If we think in - if we speak in terms of cultural burning, as mentioned, there is such a broad definition, and each community, each nation will have it is own

definition of what have that means. It is going to depend on so many variables. You know, what are the social conditions of any community, the environmental conditions, what are the objectives that we are looking to achieve with any particular prescribed burning? So it will vary.

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I would be a bit concerned that we put a lot of emphasis on how we speak about and define cultural burning and how we plug it into the existing system. The existing system doesn't work. It doesn't work. So we shouldn't really be speaking about how the system is going to respond, how the system is going to respond to the regimes that have been developed by Country for Country, not this imported model that we have that has been utterly devastating for not only Country, not only Aboriginal people, but also for the people that have arrived since 1788. It's been absolutely devastating for them as well. So I am pretty keen to explore burning and fire in Country in context of how the Crown fits into that.

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MR GOODWIN: We will definitely discuss the tension between, you know, between cultural practice and State apparatus and frameworks and control. Just before we get there, Katherine, is there anything that you wanted to add, particularly from - given John's comment about it will mean different things for different Country, from your Country, Gunaikurnai Country, in terms of cultural fire, how do you describe it as a practice?

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MS MULLET: Yes, so I think firstly I echo my sentiments from my three panellists, and I resonate with John around, you know, how does the State fit within what is right fire for Country. And for us, yeah, right fire is about good fire, and you can feel it, you can see it, you can - it just - it makes you feel right. It makes you feel good. And you can see it on all of our community members, everyone who participates in it, you can see it, Country is really happy with it and comfortable. It looks good after it. That is so important. You know you are doing the right thing when you are putting right fire into Country. So that is - you know, to me that is cultural fire.

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And cultural fire comes from many different reasons, different purposes it is not just a single purpose to put fire in. You know, it can come from ceremony, it can come from other purposes to protect and heal and care, it can come out of seasons, it can come out of making sure you are supporting the regeneration of your Country through the seasonal right time. So right fire, it feels right.

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MR GOODWIN: I know this is an obvious question, why - but one that a lot of Victorians need to hear, why is it important to Traditional Owners?

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MS MULLET: Why is right fire important for Traditional Owners?

MR GOODWIN: Mmm-hmm.

MS MULLET: Because it is the right thing to do, because culturally it is the right thing to do. We are born to know and protect and care for Country. We know that that is our lore, we know that that is our responsibility. And so putting right fire in

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Country is part of that legacy, that responsibility, and so that is why it is important to do.

MR GOODWIN: Mick, I think I just saw you wanting to -

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MR BOURKE: Yeah. So when you said before cultural fire, cultural fire can mean a lot of things. What I was saying it was a way for the Department and mainstream community to understand, but, you know, on my Country it's (speaks Aboriginal language), you know, Country fire. Or if you're on Yorta Country, it'd be (speaks Aboriginal language) so these types of fire could come down to - like what sister was saying, these fires could be down to ceremony, could be for warmth, could be for just hunting, could be for just cleaning the landscape and things like that. So the fire is used for many different reasons, and it is about understanding Country, because, you know, the Department agencies and things like them have asset protection and all your BMZs and AMZs and things like that, where we have the same sort of deal. We want to protect and look after our Country as well, because if you are not reading the landscape the right way and understanding what type of fire needs to go into that landscape, then you don't have that understanding of the right fire for Country.

20 And the biggest thing since 1840, I think it was, when Victoria was heavily colonised and land stolen from us, that them practices slowly stopped and then, you know, 30, 40 years later you are getting Black Thursdays and things like that that abolished half the Country. Like, I'm talking thousands and thousands of hectares being burnt down and, you know, things from not being able to manage Country for 40 years. So
25 people from Tasmania could see the glow from the State of Victoria on fire in around 1854. These are treacherous times that Country has changed heaps. The landscape - people looking at parts of our bushland, thinking, "Gee, this is beautiful", but it is just an overgrown parkland. When the first squatters come to this country, they have seen some of the biggest parks and estates in the world. Bill Gammage and other
30 fellas, they talk about the journals from some of the settlers, the wide open grassy woodlands from up from where I am from, now you are looking at over grown bushland people think is beautiful. But it was through the fire mechanisms looking after the Country the right way, and mob in the landscape, not just, you know, someone over 18 and up to their 50s and a men-driven job, it was done by women,
35 children that conducted these cultural burns and had Country looking pristine, you know.

So these are little things that I see, mob back in the landscape, doing the right thing for Country by reading that landscape, understanding what plants are in blossom,
40 what animals are in season, all of these type of things indicate the right time to do fire and for what part of Country, yeah.

MR GOODWIN: The Commission's heard so much evidence about the devastating impacts of the land grab of the 1830s onwards in Victoria. Matt, did you have any -
45 to build on what Mick was saying, do you have any other reflections on that impact that it is had specifically on our relationship to Country and I know these are - you know, these don't fully capture the responsibility to Country, but on those issues

around land management, healthy Country, what the ongoing impacts of colonisation are on our capacity to do that?

5 **MR SHANKS:** Yeah, so I think brother Mick made a good point about the term cultural fire and it is - kind of an extension of our arms to learn, to the State to fire management agencies, to Victorians, to the world, about what our practices are, what our culture, what our lore is, and Victoria's First Peoples, or First Peoples of what is now Victoria, explored that at length a few years ago, culminating in the launch of the Cultural Fire Strategy.

10 This was developed in partnership with the State, and in launching it and signing their name to it, they presumably agreed that that is what it was; it was a starting point and start of a journey. So it is a really important point that often gets missed. So now, coming back closer to the question, you know, the effects of colonisation and forced removal off of Country and, you know, those - those yarns that I know the Commission has heard, not just as part of the land injustice hearings, but before that as well, meant that our practices, our relationships with Country didn't cease. They were - they might have been paused, some are sleeping, some moved, you know, we were moved off of Country, and through that required to build relationships with other Country, often without the sort of cultural guidance and frameworks of the right people who were there, because they were, you know, murdered or taken elsewhere.

25 And so we need to come back and sort of understand. We often sort of go straight to the practice, "Oh, how hot should the fire be, how high should the flame be" and this sort of stuff. We need to come back and understand what is Country and obligations for Country. Country is our mother, and we care for her as our mother with love. We have obligations - obligations to her, and fire is one of the sort of the medicines and the practices we utilise to undertake those obligations to our kin. And so by being removed from our mother, we are unable to care for her.

35 And that is kind of what one of those key kind of starting points on the journey that my Elders have talked to me about, we need to sort of reconnect, despite everything that stops us, and kind of, you know, limits us being able to connect and build those relationships or maintain those relationships. We need to get back to those core principles of caring for mother, and all the medicines, all the preferences, all the ceremony and customs that come with that. And fire is but one - very important, but one kind of element of that.

40 **MR GOODWIN:** And on that point, I think, John, if I remember correctly, you mentioned the concept of cultural landscapes in the context of this work. The Commissioners have heard evidence about the concept of cultural landscapes, and I just wondered if you could explain to them the connection between the concept of cultural landscapes and the work of cultural fire.

45 **MR CLARKE:** I use the term "biocultural landscape". It is a term - it's an attempt to reflect the role that that is - it's a biosphere out there, Australia's landscape has been

drafted for thousands of years, very finitely, around the ability to identify what those cultural values are, the specific cultural values for any given landscape. So for us as an example, we can look at our landscape down home, Western district lakes, Ramsar Wetlands, Mount Warryan. This is the example I use, Warryan is bandicoot.
 5 We know that Mount Warryan is a sleeping bandicoot, it's a massive mountain, large volcanic outcrop, north of Colac. And it's a sleeping bandicoot.

The landscape that surrounds this mountain is bandicoot Country, it's very undulating up and down, and the story is this giant bandicoot created this undulating
 10 landscape, doing what bandicoots as bandicoots do. So we know it as bandicoot Country. It's more than a dreamtime story, it's more than a bedtime story for kids; this is actually a management plan. So we look at the landscape in context of what are these stories, where are these places? What are they? What are they telling us? So if we start looking at that, if you can imagine a map, you put polygons on map,
 15 there's bandicoot Country, there's snow Country, there's she-oak Country, there's muttonbird Country. We start to populate the knowledge that we have about Country. And then for each of those, we ask the next question, well, what does that mean? What does that mean that it is bandicoot Country? Well, it means that bandicoots are the keystone species. So really we manage that Country for the benefit of the
 20 bandicoots. Everything else revolves around that.

If we go to the south and look at snake Country, snake is the keystone species, so every decision we make is going to be for the benefit of the snake. And if I start to look at bandicoots and I think about, what is the bandicoot family? Bandicoot family
 25 is, you know, moving away from that Westernised, you know, it's a macropod, ya ya ya, the bandicoot family is actually a grassland species that accompany it. It's the mice that carry seed from one plant to the next. It's all of that entwined, you know, co-dependency that is created for the benefit of the bandicoot. The bandicoot is at the centre of that family group.
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So then we start to think, well, this is - what is the role of fire in that? Because the role of fire in bandicoot Country is going to be very different to the role of fire in she-oak Country. So once we understand what the objectives are in that landscape based on what we know, what the old people were doing, they were proactively
 35 burning for a specific outcome. That is cultural burn, because the cultural objective is very clear. This is why we were burning. Then we start backwards from there.

So in the case of bandicoot Country, Warryan, we use partners out to assist us. We have to reconstruct that. How do we get from bandicoot Country, from where we are, deconstruct that backwards, and then rebuild the process, rebuild the program that
 40 our old people were delivering on. So with that in mind, we, for example, a core sampling - core sampling is a great ally for us, not only that we were able to determine in bandicoot Country the fire regimes and it's evident. The fire regime is evident in the core samples. This is what was happening. These are the species that
 45 we know through the pollen count that is occurring out on Country.

Then suddenly, scotch thistle appears, all the other species appear, native vegetation appears that was not in that landscape before, because of that absence of fire. We have a massive fire event that is captured in that landscape, in those core samples.

5 So if fire in the Australian - in the Australian context, if fire is about risk management, asset protection, then we have got a role to play in that, so if we can identify what the biocultural value is in any given landscape, we can write that management role. We have got a role to do that, we can write that management plan, not only write it, we can deliver on it. And that is where we challenge the Crown's
10 notion that they know what they are doing, because they don't, but we also then invite the Crown to work with us, not against us. And if I may, I will use that as a segue, because I did provide a photograph from Uncle Percy Clarke.

15 **MR GOODWIN:** If we can get a photo of Uncle Percy Clarke. It is number 23 on the index. I am not sure if LIO have that. But yes. Yes. Thank you.

MR CLARKE: Uncle Percy Clarke was a bachelor, never married, never had children, and lived on the Fram reserve for all of his life, the entirety of his life. And he was born Robert Percy Clarke. He was born on 12 October in 1911. 1911, that is
20 80 years after Europeans came into our territory. 80 years, that's someone's life. And he died on 5 December 1997, aged 86 years. And speaking about the Crown not knowing what they are doing, he recited a story - I used to go and visit Uncle Percy all the time and he recited a story one day out of the blue, unprompted, you know, we just had - when you speak with him, they will share something with you.

25 He spoke about this one time when he was arrested and he was arrested for lighting a fire. And he told the story how he went down to the river at Fram and he was fishing, and he looked at the bank of the river and, if anybody's ever visited Fram, the Hopkins River flows through a large gully and goes past and is highly vegetated, and
30 he saw that the bank of this river needed to be burnt. It needed to burn. So he undertook his obligation to do that, to look after it. He saw it was sick and unwell. He would fulfil his obligation, he was an Aboriginal man, a Gunditjmara man, to clean it up.

35 He lit the fire. The fire ran up the hill as intended. It got to the top and went out, because there would be no fuel beyond that because it is graze paddock. He described the sirens and the lights, being thrown into the back of the police car and all the fire trucks and everyone running around mad. And he said - he described them as being mad. They were mad. They were mad. In his eyes, he could not believe the
40 reaction that came to that. And this assumption in the minds of those in the fire trucks and some sort of hierarchy in a system that didn't come from here, that system totally not only disenfranchised him and removed him from being able to fulfil his obligation to look after Country, he was punished for it. He was driven away in a police car. And the disincentive to ever do it again would have been so great that he
45 never done it again.

And so bicultural landscapes is such an important tool. It's from here. The regime is from here. It is not a European concept of land management. It is not something to be feared, like it has been. And, you know, again I provided the Commission with a newspaper article about fires that were coming out of Fram, out of the Fram forest.

5 And the description, you know -

MR GOODWIN: That is document 19, sorry to interrupt you, John, if we can bring it up.

10 **MR CLARKE:** That's all right. And that article which is on the NLIS La Trobe website just sort of underlines the narrative - the colonised narrative that has prevailed and has remained consistent in this discussion since Europeans came into our territory in the 1830s, and it's one of disempowerment. It's one of colonisation, and it's ultimately racist in every sense of the word. You know, everybody will see
15 when it gets shared the reference to "the black's forest".

Is that delineation that there is a separation here in a racial sense, and there is a hierarchy in how we speak about fire, and the role of cultural burning, not only is it about empowering Indigenous people across the State of Victoria to be participants
20 in that, and irrespective of the knowledge that they hold in that, the role of cultural fire is not just about looking after Country and correcting the calls to Country and, you know, addressing the decline. We have in biodiversity and the extinction rates that we have in the State, the role of cultural - the role of fire is also about addressing and decolonising and Indigenising our relationships and resetting our relationship
25 with the Crown.

MR GOODWIN: Did anybody else want to reflect on that - yes, go for it, of course. It was document 19 on the list, the particular article. We have it and we will tender it. It is The Sun news article: "Fires are out, rain helps at Panmure."

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I might move on just while we are waiting for that to come into the background. Katherine, go for it.

MS MULLET: I was going to add while we are waiting for the document - not that I
35 can add much more to what you have said John, because again, it resonates with everything that we feel. One of the things I want to add as a precaution is around cultural fire in the State, and the State's responsibility in supporting that, but it is also ensuring that they don't just give Traditional Owners who use cultural fire as a reason to get out of their responsibility in the fact that they have harmed Country,
40 and Country is significantly changed because of colonisation, and that just implementing cultural fire is not going to be a quick fix, a quick win, because it doesn't reflect that Country has changed significantly, and we know this through research.

45 Gunaikurnai has got extensive research that also speaks to the same issues and concerns, particularly around eucalyptus and the increase of eucalyptus since colonisation, that has had a significant impact to Country and changed Country. We

had sweet Country. It is no longer sweet Country; it's now forested. Where we have rainforest, it was not rainforest before. We want to look at how we go back to managing Country today as to how it was. Making sure that cultural fire and doesn't sit within Traditional Owners to when something goes wrong, that it is not falling on
 5 all of our shoulders for that, and that the State really needs to take responsibility of ensuring that Country is handed and supported to be the right way and needs to be led and guided by us as well.

MR BOURKE: I think, too, what John was saying, the Western science is catching
 10 up. There is science in the landscape like what John explained, you know, what is there. It is about knowing your Country, knowing how to read that Country. You know, you can't conduct a burn from a place, say, like Mansfield, and you are trying to burn Country in Shepparton. Like, the landscape is totally different, you know what I mean? If you are not in that landscape you are not going to understand what is
 15 going on in that area. And it comes back to understanding of soils, your plant types and things like that. That's why it is always good to go back to move forward, especially after colonisation.

And these sort of things don't just happen here in Australia. This is worldwide. You
 20 know, the same thing for the Americas. It doesn't matter where you are, cultural burning from Traditional Owners have been taken away. By not having mob in the landscape and conducting these things the landscape changed. No wonder global warming is speeding up so quick. The biggest thing I find is that, you know, the government thinks they know what is best for Country yet we are running off four
 25 seasons, we know for a fact that Australia don't have four seasons. We have more than that. Some parts of Country we have six to seven.

By not understanding what is going on in the landscape, you can't, "Oh, we're going to do asset protection burning in the middle of spring", when all these things is
 30 blossoming, the soils are telling you it's winter part of Country to burn. The government provided funding to do these things, when they first came to the Country to take this land from us. For 10, 12 years, they didn't know what was going on, there were bushfires, but you know who they would call? They wouldn't call forest management or CFA. They would call in the local mob group, and the mob would
 35 come and save them from floods fire or the local mob who would protect. We are always looking after everyone. It doesn't matter if you don't come from that part of the country we will look after you it is about looking after Country that is core. If we are not looking after Country, there is no reason for people to even being there.

40 That is why townships are built in flood-zone areas, they are getting flooded out. The mob said not to camp there to set up big infrastructure and things. It is the same with fire. Burning in the middle of summer and spring, they are the times you would definitely not burn because that is the time you would go and harvest. So it is about understanding the indicators in the landscape and reading Country like a book.
 45 Western science hasn't caught up and captured all that knowledge to put into a book, so you have got to go off what mob's doing in Country.

Each Country is different. So from my grandfather's Country, Dja Dja Wurrung Country, it's a volcanic Country, rocky Country. And then you go to my grandmother's Country, it's a floodplain Country, clay, sandy loam, swampland. They are all telling stories when to read and how to do to do the right thing for
 5 Country. What you want to know, the floods are here, burning, thinning, whatever, it is understanding that law of the land.

MR GOODWIN: Matt, did you want to -

10 **MR SHANKS:** I just - I wholeheartedly agree, and I just want to note as well that Traditional Owners have been having these conversations and exploring that nuance for quite some time now, formally with the State, and I referred to it earlier, and I'll refer to it again, for the development of the Cultural Fire Strategy we had these
 15 yarns. We had the yarns about the nuance and the need for right fire for right Country and different Country requires different fire, different Country requires the application of - or the reinstatement of natural flow regimes to ensure that the right fire can be applied.

20 There is a whole bunch of sort of modification that happened to Country that was not our doing. We are trying to have those nuanced conversations with everybody, with all Victorians. We are also quite often, you know, not understood, not sort of conversed with, relationships aren't built with us, and we are kind of repetitively told - and sort of to your point, brother, "Oh that practice from here can't apply there of the you can't apply that same practice everywhere, you can't just do cool burns."
 25 Exactly. That is our point. That is the conversation we are trying to have.

From day 1, we have been trying to teach the invaders, the colonisers, about Country because that is our obligation. Our obligation is to ensure people are safe. And we are not allowed through a whole range of reasons, legal kind of barriers, and we are
 30 also not today in the kind of age of self-determination and commitments to all of that sort of stuff we are not empowered, enabled to undertake our obligations, and that's a shame because our cultural obligations are the health of Country and the safety of everybody that resides here who visits here. And so, yeah, it's - it's quite - I don't know, it is just a really interesting kind of arrogance that Victoria often has when
 35 they are engaging in these kinds of conversations.

COMMISSIONER HUNTER: Can I just ask, I just brought up the Victorian Traditional Owner Cultural Fire Strategy. In relation to what you have just stated, does that strategy work?
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MR BOURKE: No.

COMMISSIONER HUNTER: No?

45 **MR BOURKE:** I don't think so. To burn Country that's your Country on Crown land, you have to jump through too many loopholes and things, that strategy is pretty much a document sitting collecting dust on a table. It is not mandated. It's not held

with any authority, and you have got things like the code of practice that's, you know, created in 2012. We are in 2024. This is how long this code of practice is out of date. You have other bushfire manuals, you've got the Forest Acts, you've got -

5 **COMMISSIONER HUNTER:** And so many strategies that are under fire. I am assuming you are all on the same page with these strategies. You might be consulted but the implementation doesn't?

10 **MR BOURKE:** No, I think the Acts have got to change quick smart, otherwise we are going to have more, like Aunty, just going to do the right thing for Country and we will be arrested as arsons and things like that. The process through the forest fire management way of burning Crown land, it's not working. It takes 18 months to get a burn up. Everyone would think we are doing 10,000 hectare burns when some of these burns we are talking about are only small, one hectare burns, some are access
15 ways to river ways. They are very small types of burns compared to - our people understand, you know, burning off. The system's been built for emergency management. It's been built for asset protection and things where they are burning hundreds of hectares, where, you know, the cultural burning stuff, it sits in that same basket. The strategy is there collecting dust. It is a good view for certain DCFOs and
20 things like that, district chief fire officers and so on. But it doesn't hold no strength. It is got no real -

COMMISSIONER WALTER: Can you give me the date of this? It doesn't seem to have a start date or finish date.

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MR SHANKS: Launched by Minister D'Ambrosio in 2019.

COMMISSIONER WALTER: 2019.

30 **MR SHANKS:** The point is, you are right, it has been ignored, it hasn't been followed. The point was it was a conversation between Traditional Owners and looking at those systemic barriers, those systems and the Acts and policies and practices kind of by agencies, et cetera, that do not work, as Uncle said, that directly impede our obligations to apply medicine to Country, to apply fire to Country.

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The strategy seeks to shine a light on that and provide a framework through which the State, Forest Fire Management Victoria or whatever they end up turning themselves into, to have conversations with Traditional Owners and break down some of these barriers. And Trakka talked about kind of the injustice of Uncle
40 applying fire to Country and being arrested for it. We had these conversations and sort of instances of that came through as part of the development of the strategy.

So where we started was stories of fire, so dreaming stories, creation stories of fire and, you know, you talked about management plans of Country, it is inscribed in
45 Country, bandicoots Country. On Taungurung Country, we have Nunutong, the creation of Country. I have been told by a State representative you can't apply fire

here. This is where fire comes from. Just because the landscape has changed, it doesn't mean fire doesn't belong here.

5 Another example brought forward by an Elder at one of our kind of later forums, on a total fire ban day, it is illegal to undertake a smoking ceremony. You can't light a fire. Technically, you can't have an open flame. I think we all know what a smoking ceremony is, right, it is safe, it is contained it is more healing, but technically if you look at it, there would be the ability for the - for the State to prosecute and of course they said, "We would never do that, we would never activate that kind of -" but they
10 can and there is that power imbalance there, right.

So when we talk about decolonising and indigenising, these are the sorts of conversations we need to have, the strategy starts to build some kind of boundaries around some of those conversations that need to be had, those nuanced, detailed
15 conversations between nations and the state about how we can do things better so that we can make it work.

And the large part of the failing is we don't hold the power. The State holds the power, and they are not investing in it, and we can show numbers of that. Traditional
20 Owners post-launch also did a piece of work to describe what implementation would look like. We worked very closely with DEECA at the time, and that was a really great process. We made a submission - the figure was around 111 million over five years, supporting all mobs to develop and implement cultural fire programs, and less than a quarter was invested into the delivery of it.

25 **MR CLARKE:** Seven million.

MR SHANKS: It went all towards just the assimilation sort of elements. We talked - so it was "So you want to burn, come and don the greens, come and work with us
30 and burn inside our systems. We are not going to look at the reforms, do it within the system." And I think it was in 2021 - it was 2021, the Chief Fire Officer on Reconciliation Week made a post on LinkedIn, saying how - "We are committed to reconciliation." We didn't have a relationship that he reconciled, but "We are committed to reconciliation and what that looks like in regards to fire was we will
35 find ways for to try for cultural fire to work inside our systems." We won't change it, we won't critique it, just do it inside the system. Come inside over in here, and essentially assimilate.

COMMISSIONER WALTER: Yet objective 1 of the four objectives in that
40 Western Australian says:

"Develop operational pathways that enable Traditional Owners to lead the planning and undertake cultural burns across all land tenures and cultural types according to their cultural obligations".
45

How much progress in five years has been made towards achieving objective 1 of 4 in this strategy?

MR CLARKE: The funny thing with this is that mob are getting more traction on private property due to existing Acts and legislations in place. So when restrictions are down, say, there is certain times of the year you get restrictions, the farmer who
5 owns his private property can ring CFA and say, "Look I will do a burn today and burn my stubble". So you notice sort of a month ago smoke everywhere, things like that, that is where restrictions dropped. We are out of that peak summer season, the farmers just go willy-nilly burning off the stubble paddocks to get good growth. You know where they got that from? They learned that from the mob when they came
10 down to burn it off to help grow their Western produce and, you know, create the food. Mob can do the same thing, but on private property. The trouble is we don't have private property. You know, I don't even own my own house, little things like that. The big farmers, they can burn. Our Country is also so-called Crown land. It is not Crown land; it is Yorta Yorta land or Dja Dja Wurrung land. But we can't go out
15 and do the same thing. We have still got to use the emergency management system. And it comes back to the code of practice these things are in place, then you have got the manual that sits beyond that, the DCFOs, your fire managers and things, they won't move unless it is written to there.

20 Then we go to the UNDRIP and things like that that state we are allowed to practice our culture and to be able to keep going on Country as Traditional Owners, where, you know, we lost Native Title stuff on Yorta Yorta Country from the Dja Dja Wurrung, the tidal estuary has been washed way, yet we can't practice Country even
25 though when we're trying to - so it is a lose, lose in every situation that we come across. Just like, the goalpost is here, you are going to kick a goal, and they will move the goal every time. And my position as a cultural burn planner within DEECA system - or back then it was called DEWLP. They change the name all the time; I don't know why. In the last 20 years from NSE, DSE, DEWLP now it's DEECA. They are always coming under forest fire management.

30 Again, the position through the reconciliation agreement to work out the planning and the way things go I can take it back to Dja Dja Wurrung and be able to be a planner in government areas of Country. So the thing happened was that - oh, we've got a - there was a need there for cultural fire and I said that, you know, you need
35 something embedded in here to help mob work the existing system. And then a couple of years later that fire strategy come out, you know, 2018, '19. '19 it got launched.

40 So we are in 2024. Things have gone backwards. They have launched - out of the 100 and whatever million we said would work within their existing system, 27 million of that got allocated to a cultural fire program for mob to build their
45 strengths, build their own strategies, things like that, but it was like a thing up in the air and you have got to get all the mob, and whoever gets to it first can get a chunk of it, you know what I mean? Certain groups missed out. Some groups didn't even get out of the money. There are groups out there who aren't even incorporated, aren't registered, don't come under recognition of RAPs or anything like that, they never

got any of that money. Certain groups got a larger chunk of that money, they were a lot weller off.

5 At the end of the day is, they are still going through that existing system. There is a thing of the DCFO knowing that this is the right way to go, so we are just going to do the basics of training which is a basic wildfire awareness to have mob come on Country. But now it's gone back to you have to have a general firefighter, you have to be over 18, you have got to have a drivers licence and pass a fitness test. I struggled to pass that fitness test. I would hate to see one of the Elders out there that
10 are 70, 80 years old, to pass the test. But then using the bush university of educating the youth coming up, they can't even do that test.

How are we going to implement cultural fire and the right fire for Country when all these things are in place? The strategy has little ways for doing that but it is not held
15 with any authority around it. It needs to be embedded in the code of practice. The code of practice is where things need to change and the risk and mitigation type stuff - most of the time we want to burn the Country is very minimal risk. Most of the time that we are being looking at parts of our Country, when we want to burn, is in the middle of winter and things like that, like there is times for that Country to burn,
20 so the type of planning that goes ahead to get the burns up and going right now with the existing system is ridiculous.

COMMISSIONER LOVETT: Can I ask, you mentioned a couple of times the code of practice. Can you just explain to us what the code of practice is.
25

MR BOURKE: It's the bushfire -

MR GOODWIN: Code of practice for bushfire management on public land?

30 **MR BOURKE:** Is that the one - yes.

MR GOODWIN: For the Victorian Government.

COMMISSIONER LOVETT: So what - is that how the government kind of
35 adheres - that's their own rules, is it, around how they manage fires, the code of practice?

MR BOURKE: Yes, that is how they run their burns on Country, then there would be a manual that sits underneath that and that is what they are bound by, so if it is not
40 in that manual, no Traditional Owner, no cultural fire, nothing, none of that is mentioned in that whatsoever. When you go to burn Crown land, the DCFOs won't move because it is not embedded in that process, it is like their Bible.

COMMISSIONER LOVETT: And do you think that Traditional Owner rights and
45 recognition around fire should be embedded in that code?

MR BOURKE: It should be embedded right through it. And then the training type of stuff that comes into that, I think some of them, PBOs, plan burn officers need to come through a cultural process for training. When you are talking about Country and burning Country we are seeing fires up in the canopy. We should never see fires
5 in the canopy, whether it is APZ burn, BMZ burn, LMZ burn -

COMMISSIONER LOVETT: What are those ones?

MR BOURKE: They're types - asset protection, ecological burns, all these types of
10 acronyms they use for burning Country. If we were to get a fire up in the canopy, we would be speared, you know. You should be sacked if your fires are going up into that tree tops, because that is a whole different story up there again. These ways of practices, and they are the main body for burning Country are held at - we know what we are doing, you know what I mean? And mob can't even go out on Country
15 and do a little one hectare burn with their kids, teaching them about land and how to read the landscape.

COMMISSIONER LOVETT: Anything else from the panel?

MR GOODWIN: I saw Katherine getting fired up.

COMMISSIONER LOVETT: Just jumping in.

MR GOODWIN: I wanted to make sure you had an opportunity to say something.
25

MS MULLET: It goes back, I will go back a step. But it is about the enabling and it is about the systems that we have to sort of conform to. We have to - GLaWAC's been operating cultural fire for a number of years, and we operating that service through an MOU with the State. It was a localised agreement that was enabling us to
30 be out there on Country. What was identified was that that agreement didn't really appropriately cover and had gaps and things, and we needed to fix things up to enable our organisation is protected, our community is protected, and our practices are appropriately protected, and that includes IP. Then what it is come down to the state has now put in front of us we require a section 26 agreement underneath the
35 Forest Act, which makes us a member of the forest - FM Vic, which in a way makes sure that we conform or we bend the knee to State Government to fit within the parameters of the FM Vic as an agency, as an active partner in that space, and that concerns me.

MR GOODWIN: I mean, you know, if it was the only mechanism, the only opportunity we have to be able to enable and to actually put cultural fire and do right fire on Country and put it within the landscape, then we will do that, but the moment that is the only way that we can be operationalised in that space, and operationalise and participate in emergency management or any other elements of forest flood or any other
45 emergency on Country.

MR SHANKS: Yeah, so those barriers are present for all of us, those kind of practical - that lived experience navigating that system and applying fire in the past as well are examples. You brought a lot of those stories from inside the department to try and create those pathways for the DJAARA mob to apply Jandakwee. From
 5 day 1, right, in those forums around the Cultural Fire Strategy, the Cultural Fire Strategy needs to be reviewed. So to your question, Commissioner, the - do we want to be embedded inside that code, no. We need to rewrite the code. It is not current, it is not up to kind of standards. I'm not -

10 **MR BOURKE:** It's out of date.

MR SHANKS: It is out of date, and it needs to be rewritten and renounced. We need to be describing right fire for Country and pathways towards activating right fire for Country pathways for mob to be activating their rights, you know. Those things need
 15 to be embedded throughout it and it needs to be from our perspectives, we need to be holding the pen. We are not empowered - I am not saying allowed; we are not empowered to hold the pen. Nothing about us without us. And too often these things are written for us on our behalf by somebody else, and that is something across the board that needs to change.

20 When we consider sort of Traditional Owner rights and interests, predominantly those relate to public land management. I don't use the term Crown land but public land management. There are still unbelievable barriers in place, it's systemically racist because it doesn't enable us, it therefore - it blocks us, it is discriminatory
 25 because it doesn't provide pathways for us; it provides pathways for -

COMMISSIONER HUNTER: Can I just ask, if you go back - you said it wasn't great but you said you'd have to sign up to something else, does that include more bylaws and laws and things you have to abide by, and really takes away from the
 30 essence of what First Nations fire is.

MS MULLET: I think - well, at the moment State controls it all, regardless of whether we signed up to section 26 if we wanted to implement cultural fire on public land, we have to conform or fit the parameters. So we have to fit within the
 35 descriptions (indistinct) to why you put fire in and how to put fire in. We have challenged that, so Gunaikurnai have challenged that, we have had fires that sat outside the prescriptions, we have proven we were able to put the right fire in at the right time and did the right thing we wanted to do. We sat outside those and challenged those. That was based off local relationships and local partnerships and
 40 local trust.

So with anything, you have got to be able to prove your way. But obviously it takes us even a longer journey to prove our cultural knowledge, our cultural understanding of Country, because there is that systemic racial assumptions and perceptions what
 45 we can and can't do and what we can and can't deliver on. And we've proven, we will continue to prove, we can do this and do this for our Country.

MR CLARKE: To elaborate a bit around local trust, it is definitely one of the issues - you know, I speak about DEECA generally, but the regional - each region - I think there are four regions in DEECA, really, six, is there? They are all autonomous. They're pretty much independent of each other. What is happening in the far east is
 5 entirely different to what is happening in the south-west as an example. So we can have a document and a whole range of code of conducts and that, but the workplace culture employment and housing and how they will be applied on the ground may not, and even if they will be applied on the ground.

10 That local point is critical. If you are going to come before us at Eastern Maar I can point to a really good relationship locally and very, very good, confident, robust relationship where we can have very difficult conversations, but it is very clear to all parties what we are endeavouring to achieve here. It is very clear. To be honest, I
 15 couldn't say that for other parts of other regions. I hear horror stories, and it's incomprehensible, some of the things I hear about what happens in other areas, because that local relationship that we have is, you know, it's not the best but it is very good, and I am very confident. That allows us to build trust and understanding. And it allows us to be somewhat indentured into how burns work, but more
 20 importantly how they do not work. And that's then how we can identify these are the gaps. How do we constructively address them.

And the issue is systemic. It is right across the board. The moment we start having the conversations with anybody out of head office in DEECA, it is a different ball game. There is no traction. We will not get any traction at all.
 25

COMMISSIONER LOVETT: They are in charge of the system.

MR BOURKE: Yeah. So, like, the Chief Fire Officer, sets up at the top then six DCFOs, District Chief Fire Officers. Yorta Yorta sits in one part of the Country, the
 30 other part of the Country like Mallee, with two different systems coming from the same company. The Chief Fire Officer says that cultural fire is up there with the priorities, but then you come down into the regions, the districts and they are playing two different gales. The mob in Mallee, you can do this and this and there, and so on, but then you go to the Hume and they are doing the total opposite. Then you are
 35 having two different MOUs with the one company, you know, and to burn Country, "Oh, you have got to wear these overalls, you don't have to wear a hard hat. You can receive payment for this one but you can't receive payment for that one. You've got to have BWA training or GFF training, for this one not this one". It doesn't make sense. I think it's a road that goes from McCoy's Bridge down to Murchison,
 40 everything on the west you can do so much stuff, then you go to the east and it's not working.

So I think in the west, we've done a few burns because it sits with mob Mallee. That is where it first started. That is the first time I ever heard of cultural burning with
 45 DEECA, through Dja Dja Wurrung and RSA, in 2015, '16, I gained a position over there, but since then it is rolled out. I am doing - I work at Yorta at the moment in the

cultural fire space that is a big difference, a massive difference just because of that line in the road. It is scary.

5 **MR SHANKS:** So the State has invested a lot in itself and in sort of positions around cultural fire, enabling cultural fire, this sort of stuff. We have talked a lot about systemic issues, and essentially we talk about strategy catching dust, you are right. Traditional Owner native food strategy, catching dust. Cultural Landscape Strategy catching dust. Water is Life, real dusty.

10 Within each of our mobs, we develop our own strategies and these are some of Taungurung's, right. We have cultural air management strategy, it takes broad concepts and frameworks we as Traditional Owners have given to the State. You want to be told explicitly how to start engaging with us and understanding, here you go. Here's your starting point. Take it further with these documents, biodiversity
15 strategy, cultural air management strategy. So we speak their language, we try to, you know, tell them how it is we want to go with, we try to keep ourselves accountable by setting objectives.

20 And that - too often it talks about those systemic barriers, the need for reform, the need for decolonisation, indigenisation, these kind of things, yet they - so they invest in positions, we front up, "We are ready to talk about all them things", "I am here to step you through a nomination on the JFMP", the JFMP doesn't work for all the reasons we've described.

25 **COMMISSIONER LOVETT:** What's the JFMP?

MR SHANKS: Joint fuel management plan. Unfortunately, we live in a world of acronyms. Those practices in the code of practice are nominated and enabled through, and it is a real prescriptive and difficult process for everybody, not just
30 mob. We are saying, "Yeah, this isn't working. Can we have a conversation about that, that it is not working?" "No, no, I am just here to make a nomination, to support you make a nomination and then you will don the greens and will then do it in your way." We want to have those broader conversations we can't.

35 Those folks, we have great relationships with them and they understand. They have worked with us, worked for us and worked in the State. They get it and they are powerless. "I can't say this to my boss", you know. As Aboriginal people, we are sent in circles. We assert our sovereignty, we commit to partnership and Recognition Settlement Agreements, Native Title determinations, these are all kind of forms of
40 developing partnership working together in various kinds of ways. And we want to activate that, we want to do it. So let's talk about cultural fire, let us go and talk to the Chief Fire Officer or the Deputy Chief Fire Officer, what have you. "No, no, you have to talk to this Aboriginal person we have employed, have a yarn with them first and they will bring it back to us."

45

As Indigenous people if we want to put fire on Country we have to have two, three, four sets of conversations, a non-Indigenous person, landholder, what have you, can

march straight into the office and have those conversations directly, rather, with the decision maker and those on the ground. And it is - yeah, it is weeks, months, years of work to build relationships so you can just talk to the right person, let alone get any form of kind of outcomes and actions and again, it comes back to what we all
5 sort of described at the beginning.

All we are trying to do is undertake our obligations to heal and care for Country and keep everyone safe of the our obligations are to mother; that is what we are here for, what Indigenous people are here for. It is not about having more people making all
10 the decisions and having the money; this is about Country first and foremost. Yet we are still blocked from doing that because we are not being understood for what we are. We are having to go all the way along and essentially, you know, be fully compromised just to have a conversation, and the State gets to sit there all comfortable. We have to speak English, we have to navigate their systems and all
15 that sort of stuff. We do it and we are still ignored. That is how it feels.

I can sit here and describe that, I am sure we have all heard the frustrations from our Elders who have been doing it for much longer than I have. You know, it is real and it is painful and that's passed on, here are additional barriers and it is all caused by
20 people not trusting us.

MR BOURKE: Being well under-resourced is a big thing. Being well under-resourced. So to conduct a burn on Crown land, or so-called Crown land, would cost thousands of dollars, because of the types of methods and things they put
25 into place that you have to have as a requirement like sturdy boots, pants, shirt, helmet, like, we just ordered something for the mob there, we needed 10 mob to come out on Country and burn, you are looking at over 12,000 just for that uniform. Yet on the private burns and on some of our creating partnership burns with certain people that own Country, we go out there we have little kids and Elders out there.
30 You know, most of the money is put on the barbecue, putting on the feed or doing some cultural activities on the day, where, you know these overalls, 12,000 for 10 people to wear these overalls that you are doing a burn that is nothing like an emergency management burn, you know.

Like, we are not fighting big canopy trees and things. Like, the burns are two separate types of burns, yet the requirements are the same. You know we don't all have big fancy red and blue flashing light trucks and all that bally - you know, the big Mercedes Benz water carriers, things like that, we don't have that stuff. Most of the time, we're saying the fire is going to go over there and it's going to turn off,
40 because you have read Country the right way and it will trickle over into the area that is green, or mineral earth will turn itself off. Most of the burns I have conducted, proper, traditional burns, no water used, you know, we might use the water cart to wash our hands when we are finished. That is it.

MR GOODWIN: That's connected to John's article to show that the rain came - 98 years ago that article was from, the rain came just on time.

COMMISSIONER LOVETT: Just for people listening in, where you are still comfortable in sharing, what is the difference? When you see the likes of, you know, bushfires and stuff happening on TV, clearly you see large-scale burns and stuff. What would a cultural burn or mob burns look like compared to - just give people an understanding listening in.

MR BOURKE: Well, I think it's the way we have been approached since colonisation, with the Black Thursday, the big wild fires, there's always been a fear of fire, always. You know, if you go to a planned burn, you have got like 20 people in the line with drip torches and bug mix. The drip torches are filled with bug mix, so you've got diesel and petrol. So there's one indicator already: you are not using Country to burn Country, you're adding in a problem. You're burning Country, like, poking a snake. It roars up trees, end up in the canopy, it is hot. That is where you have to wear the green overalls to keep yourself protected the fire is running rampant.

If you have a cultural burn you might have one ignition point, but watch it how it is travelling, you understand and listen and build the connection with the fire. As that it is cruising through Country it is very low and intense mosaic style burning you can walk in between it. Turn the soil after it, have you got the video - did I send you a video?

MR GOODWIN: I am not sure if we have it ready to go, sorry.

MR BOURKE: There are some videos out there you can see and visual identifies the different types of fire. On council land we ran a fire-stick workshop in partnership with some of my brothers from up north and all across Australia that we run this workshop to help educate different community groups and things like that and put a jigsaw puzzle back together. And, you know, none of us had any green overalls or things like that, and you are just walking with the fire as it's going, like that is the difference between a planned burn and a cultural burn. It is so relaxing, calming, the smell is different. You go to a planned burn, you can smell diesel and bug mix and things. You go to a cultural burn, it's got a different smell.

Kids, kids involved, Elders involved, to get an Elder on to a planned burn would never happen because you have got to be pretty much like a sport fitness fella, you have to be able to get around a footy oval nine times in about 40 minutes with a 20 kilo backpack, and things like that that, you know, I struggle to do myself let alone getting an Elder to do it. Probably get a clap in the back of the head, "What are you getting me to do this for?" It is not right.

MR GOODWIN: Something we do have are some photos from you, John, though, of the burn. If we can bring up photos of cultural firing, there should be five photos.

MR CLARKE: To clarify, that is not cultural burning. So we asked DHER to do a burn on our behalf in preparation for cultural burning, and we labelled it a reset burn because in that case, there probably hadn't been fire in that reserve or in that

landscape for 100 years. And if your load was monstrous, it was absolutely huge, so there was no way in the world we were going to go in there and do a cultural burn. Had that fire gotten over the fence and gone, you can just imagine the headlines.

5 So DEECA done the reset burn for us. After that - this is Aunty Leanne Clarke, she was part of a revegetation program that we put into that landscape. You can see the burn footprint there. It is in Stony Rises Country; there is lots of wetland around there. And again, this is drought. This is in Bandicoot Country, Warriem, this is a reset burn. We have had two seasons with DEECA in there, we have used it as
10 training, bridging a relationship with DEECA, they - the intent for that for DEECA was rather unique in a sense that it was for a cultural objective, that is for bandicoots.

This is in many ways a reserve that we envisage will act as a classroom for us as a community, as a bit of a social reconnector for us back on to Country because prior
15 to this being the reserve, about 20 years ago, it was private property so we didn't have any access to it. Since that time, we have had access. The infrastructure, the Aboriginal infrastructure, this is on Gulidjan Country, the infrastructure in the wetlands, stone axes everywhere, snake traps, this landscape is amazing. And so that reemergence and that presence of our community back into this, the role of fire is
20 playing such a larger role for us in that social cultural context.

It's also bridged the relationships with us and the neighbours. I am sure the elderly gentleman who held these patches of land for generations probably never ever met an
25 Aboriginal person before, and suddenly we are out and being proactive on Country, and they are speaking to us and they are telling us, what they know about that landscape, sharing information with us and vice versa. So there is a lot of bridge building going on as well. So it's a Parks Victoria managed estate. There is risk - there is risk in fire, but the risk is born out of current practices, and there is also, I know you mentioned what you see on the news with bushfires, very real, people die.
30 We know that. So it is not - it is a serious conversation. It is a serious thing to be thinking about.

So in context of that, there is a psyche, a national psyche in Australia that is scared of fire. You know, we should be wary of it but not scared of it. We should be wary of it,
35 and the difference between a raging bushfire as opposed to burning, doing those burns for cultural objectives and purposes, they are palpable. They are miles apart. And we can see that, and again, even the science would back this up, we can put core sampling into any landscape where we have had a significant fire event, and I will point to the Otways in the 1980s, Ash Wednesday. We can do core sampling on
40 Country there in Gadubanud Country, and the core sample demonstrates existing fire regimes and that deposit in the core samples that demonstrates a fire regime would be minimal, absolutely minimal, minute in the scheme of things. Then there is a significant absence of fire then there as a massive deposit of charcoal, and that is a significant fire event. That's a bushfire, so even the science will show us that the
45 difference between cultural burning and bushfires, it is miles apart, miles apart.

And that is one of the challenges for DEECA, because to be fair, to this day, there is a population out there in the broader community that expect, you know, a risk-averse approach to fire. That is going back 190 years in our Country at least, of that sort of - that fear of fire, so the government's going to respond to that. They will respond to
5 that. So I believe fundamentally, we were in the position where we cannot only bring the Crown and this agent, the State Government, on board with what we are doing as we have always done it, but also in the broader Victorian community and give them confidence that fire is not something to be scared of.

10 **MR GOODWIN:** Katherine.

MS MULLET: When you see and you experience the fire and right fire, you just get this really great feeling with it, and you can see that the smoke just hits canopy and it just disappears, it goes wispy, there is no big columns of fire is running up the trees.
15 You put a small ignition in and you can see the bugs moving, you can see the animals scamper out of the way. You can walk on the landscape with bare feet because it is cooled down so quickly. It is not hot. You are not burning major fuels, you're looking at what is on where you are burning and you are picking the right place and the right time. You are not burning the logs, animals are protected. The
20 safety of all those things that you are burning for are there and looked after and cared for.

What is really important is making sure you are doing it in the right forest structure. Again, cultural fire needs to be in the right place at the right time. Not all of the
25 Country is going to be able to take on cultural fire so quickly, because the forest structure is not right. It is sick. It is thick, it is looking poor, it is not healthy, it's not what my grandfather described to me of what Country needs to look like. That is where the reset burns comes into play, the relationships trying to build and reestablish what does it need to look like so we can put in that right fire in. Because
30 right fire is not scary; it is actually quite beautiful.

MR GOODWIN: We have talked a lot about the relationship with DEECA. I am interested also in the relationship with either Fire Rescue Victoria or the Country Fire Authority in terms of on the ground relationships that a number of you have
35 talked about. Did anybody have any reflections that they wanted to make about that working relationship between Traditional Owners and those agencies?

MR BOURKE: I think the CFA, they're more based around house fires and things so in town, so they don't really play much of a part when we are trying to burn
40 Country. We have had some good relationships with some of them Mooroopna staff. I ran a group called Wilemba which means large communal fire. It is a group that supports community in all parts of culture from artefact making, song, dance, NRM, natural resource management stuff, we had a place called Kaieltheban Park named after the local clans group, one of the Yorta Yorta speaking clan groups in that area.
45 We are not incorporated, we are not registered as anything like that, we are just a grass-rooted community group a bunch of mob coming together and doing things for Country.

And we created a partnership with the Shepparton Council and they are the ones who are the managers, and if you are a manager of land or a private owner, all you have got to do is get that approval and then you can go out on Country culturally and burn that area. So they contacted CFA then they just come out and said hello, and bring their fire truck and let the kids jump all over it and things like that, because they don't really have a role to play. But if they did see smoke and someone rang up and there is smoke in the town, well, they would have to come and do it, so I am talking literally kick a football in the Mooroopna township.

Then you have the Goulburn river right there, and we burn this section of land, probably six hectares, I think it was, as community. We have had four or five young little kids from three years old up to I think some of the Elders out there were about 60, 70, it was just a nice relaxed day. The Elders and the women was making basket stuff. The men was over making artifacts and scar trees and (indistinct) and let the fire trickle around. This is in the middle of town from Mooroopna up next to Shepparton. The burn was so relaxing. The CFA come to say hello.

Other than that, the CFA don't get involved with burning Country. It is more Parks Victoria, DEECA, because all them so called Crown lands are managed by them. The township around the houses, that is when CFA get involved, but Parks Victoria have been a bit of a hindrance sort of thing, because there is types of Country that you want to access, but you need their permission to do it. How I said to council was to manage on that Kaieltheban Park burn is because we created a partnership with them to move on to Country and be able to do that. That is not a thing in legislation, it was just over the last seven to 10 years, we have been knocking on their door, asking these questions.

Where Parks Victoria, you need permits and things to go on Country, and there is some grasslands in the northern grasslands up around the Terricks and place like that we want to burn, we can't because they are denying access, because the sheep farmers have got a grazing licence on that area or they want to graze their sheep to that area, which is one of the most hazardous things for our grasslands because, you know, so-called Australia never had hard-hooved animals, then we have the sheep and they are flattening and concreting the ground. CFA, no, parks, yeah, DEECA yeah, no other good relationships with any fire fellas.

MR CLARKE: Certainly our experience, it can be a bit hit and miss. Really remember too, we cover vast tracts of land in an acreage sense in traditional territories. And there could be in excess of 100 or so individual brigades. So that would indicate the need for a strategic relationship locally. We have statewide strategies and what not, but more and more, we need to have the local knowledge strategic relationship strategy.

So you know, I don't want to be in the position that I am currently am where I will get a phone call at 6 pm from a captain out by a team car, you know, because there is an ongoing fire, and they are calling me directly. And I could have, you know, 50 of

them in one season. So we do need to have greater strategic approach there. It is great that they do call, and we commend the CFA for having a go. But again I think it comes down to the individuals and the individuals in these district offices that you know, we can develop a great rapport with any one individual, but the moment they
 5 move on or vacate that role, then that relationship goes with them. So that is always a struggle for us.

The CFA are active around, you know, communities and management, and there are a number of communities and management managed public land estate down our
 10 way, particularly around the Western district lakes. So they do have a role because they do all the burns on committee of management estates. The relationship can be improved, you know, but also, you know, in our particular Country, we have a lot of dairy farmers, you know, dairy farmers, I use the milk, that was my first paid gig. You are up at 5 am, milking cows, you go and do your farm work, then you are
 15 milking again, you know, 4 pm, a couple of hours, and your day, that is 24/7 days a week. They are responding to a fire as it comes.

Beyond respond to go a fire they are not going to be chasing up to have a relationship. That is the reality of it. So we need to have these more localised
 20 strategic frameworks that allow them and allow us to have a relationship.

MR GOODWIN: Katherine, on that, did you have anything you wanted to add?

MS MULLET: Yeah. Again, this is reflective of local relationships and how
 25 important it is to have local relationships. Just on the weekend just gone, we had crews supporting CFA on a burn, on Dutton's Down, and it was quite successful, and our crew really stepped up to support it, because they had this knowledge of burn on Country. CFA is very much, they are focused on infrastructure and assets and making sure that homes and houses and people are looked after and protected. But
 30 Country fire, you know, is not quite in their strength, but our crews actually showed that and built this really great relationship through that and supporting that delivery out on Country.

MR BOURKE: I think they are volunteers, too. The majority of those in the yellow
 35 uniforms, CFA, Country Fire Authority, majority of them ones are volunteer lads, so they don't - they're heavily resourced got funding for tankers and equipment and stuff like that, but the people on the ground are actual volunteers as well.

MR GOODWIN: Did you have anything?
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MR SHANKS: We have had sort of a lot of interest in - from a couple of brigades who would like to learn more. Resources have been the barrier. They haven't had any to sort of offer us. We are limited in our capacity, right, so we need to pick and choose pretty carefully about what we do and that was not the biggest impact. Other
 45 than that, we have had good - good relationships engaging with the CFA sort of in other areas, bushfire management plans and these sorts of things, for properties that we own or are involved in. Then it was some agitation by one of the captains at the

time that provided through the relationship with, I think, the local council, some funding for myself and an Elder to attend a national Indigenous fire workshop. To my knowledge, that is sort of the extent. We haven't gone after the relationship. We are very low on resources, and our sort of focus is on, really, the relationship with DEECA as the main requirement.

COMMISSIONER LOVETT: Just picking up on that example there, Katherine, how do you - and then broadly for the panel, how do you protect your IP, the intellectual property and particular around this stuff. This is really important to us.

MS MULLET: We have policy. It is still in draft form, and again, it is down to relationships, so it is about making sure that whoever is in leading really is aware of what they are allowed to know and not allowed to know, and we support our teams and crew to share their knowledge where they feel comfortable where they don't feel comfortable. We will reinforce that to make sure they are properly supported in that. It is a tricky one, it will continue to be tricky, everyone will want us to deliver and do things, but where is the line.

COMMISSIONER WALTER: So do you need support in getting proper IP protections in place, because I think depending on relationships -

MS MULLET: Yes, I think everybody would.

COMMISSIONER WALTER: As you say, relationships change, people move on and often, yes, so I think you need something stronger.

MR BOURKE: Mob burning Country, they need to be resourced for all these types of things, for the strategy for the IP protection, like, we need to get things implemented so we sit side by side with the Country Fire Authority. We sit side by side with DEECA as our own identity the way they are funded. Because they are funded big money to have them businesses in place. And if 38, roughly, clan groups in Victoria, roughly if they was all well supported, they would be able to have, you know, a good fire team to help everybody, not just for us as Traditional Owners but for mainstream communities as well, because it is about everyone who lives on this Country in so-called Victoria.

MR SHANKS: I mean exploring the kind of - the difference between intellectual property and Indigenous culture and intellectual property is important, and our CIP, our knowledge and practice and relationship with Country is mined and stolen daily, you know, by a prospecting for one, of our species and our relationships to species, our medicines, our ceremony plants are being taken and going, "Hey, want to be involved in this project?" We are saying, "Engaging in that is going to break law, if the wrong people are consuming these materials we are going to have problems."

The first principle in the Cultural Landscape Strategy talks about intellectual sovereignty is a foundation for leading management of Country. It is all precisely. So we set forward - we set out - Traditional Owners set out a set of principles guiding

principles, a framework through which DEECA, in this case, predominantly Parks Victoria as signatory to it, can engage in conversations around these kind of complex matters. They are complex, right? We have got these two worlds trying to have a conversation about what is right for Country. Yeah, five years later we don't - we
 5 don't see anywhere near enough progress. There isn't the commitment and the trust for the State to go on this journey with us.

We have from day 1, I know the Commissions heard stories of colonisation, early days, all this sort of stuff, mob has reached with arms open wide with our
 10 obligations. I have said it several times to everybody, it is a safety, and we have been trying to do this from day 1. The reason we are here today is in part an educative kind of process. It is not just to kind of say, "The State's bad"; it is to also say, "How can we do things better, how can we build better relationships with Victoria?" And we are continually - this is demonstrable, we were continually told, through
 15 ignorance, that we are not wanted here, and we turn up anyway. We front up anyway, and continue to try to share, because we want to see healthy Country.

MR GOODWIN: We have the video that you mentioned, Mick, so just before I ask my last question and then move into the closed session, might just ask that at least
 20 the first video be set up which is a drone footage from a burn. I think that is what you were referring to. And then the second clip is the set up for the burn, I think. I don't know if you want to talk us through it or if we need to - if the sound is important.

MR BOURKE: Yes. So this is a cultural fire workshop we hosted between
 25 Mooroopna and Shepparton in a significant place called the sand hills opposite the Mooroopna flats. Our people walked off Cummeragunja and set a strike, one of the first strikes ever in Australian history, for our mob. This here burn was conducted during a time when prescriptions were on. So normally they would be off in that March period, but they stayed on a couple of weeks longer. Then the CFA, you
 30 know, did play a part in that, to help us get the permit up and running.

But you can just see the mob cruising around. There is no big fire trucks and bells and whistles. You know there is no one in green uniforms, you know, getting around. It is just mob walking Country, slowly doing a cool mosaic-y burn, just burning off
 35 the dead matter in the landscape. We call it giving the Country a haircut, trimming up the hair, getting ready for the wet season before it comes luscious green again.

MR GOODWIN: I think it is on loop, if we can play the next one.

40 **COMMISSIONER LOVETT:** Not much smoke, though, is there?

MR BOURKE: It trickles and goes into the canopy and disappear. We use these days as bush universities, so it is a day of educating young fellas and other mob in that space, and it is about monitoring the Country as well. We are not just out
 45 burning Country for the fun of it and thinking - we are actually monitoring and collecting data and seeing what goes on, stuff like that. You can see the joint managed park rangers from the Barmah National Park mixed with the Woka Walla

rangers based out at Yorta Yorta nations. The boys are setting up a monitor plot there and take 360 photos there. You add it into an app called Fulcrum which collects the data so we can make a template for the next generation coming up so they have something to work off and understand what is going on in that landscape.

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Pretty cruisey day, and, you know, relaxed and the atmosphere was good because we are all just having fun and looking after Country, did a bit ceremony and put on a big feed. It was all - look at the little kids just cruising around, you know. It was quite amazing day, like, just like mainstream fellas in that video as well, so it was about inviting everyone that lived in that landscape to come and walk with us on Country, it is about walking together.

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DEECA runs a program used to be called Safer Together. That is what we believe everyone walking together as one to get the best outcomes for Country that future generations are going to have a beautiful landscape to walk in.

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MR GOODWIN: So my final question for each of you, really, is it is picking up on some of the themes that have been discussed I think in the words of John, there is no traction with DEECA and all of you have discussed the inability - well, lack of control of the system, and incapacity for all the barriers that are set up for Traditional Owners to practice culture. What needs to change to fix that situation? What are the key things? I think - the Commissioners have to make recommendations; what are the key things that have to change?

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MR BOURKE: I think the partnerships are there when you create the partnership. It is about talking to the person and creating the partnership. But then they are bounded by that code of practice and things like that. I think mobs just need to be heavily resourced, these practices and Acts need to change ASAP because these of are the excuses that DEECA are putting back on to us, why we can't access Country and things like that. The key for me is having access to Country and being resourced for my mob to practice one of the oldest cultures in the world.

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MR GOODWIN: John?

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MR CLARKE: Definitely one of the fundamental issues, it is not just in the fire conversation, obviously it is in a state conversation and national conversation, that is the colonisation, you know, that is fundamental to all of these issues that we are speaking of, and it is a mindset as well. We speak about, you know, capacity and incapacity. But there is a real incapacity on the part of the government and all the arms of government including DEECA and forest fire management, is a clear incapacity to acknowledge colonisation and what it actually means.

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And far too often, you know, I know that in our space at home working for the Eastern Maar, we find ourselves in these conversations where they are ultimately about government's comfort levels, not about ours, and, you know, it's - I often, you know, point to the fact that, you know, the objective of any conversation that they

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have with us is not about how comfortable we can be sitting in colonisation. That is not why we exist.

5 You know, the corporation that I work for represents the most vulnerable people in south-western Victoria, and with that in mind, (indistinct) our objective is to lift our own people up out of that. And it is not about how comfortable or uncomfortable the Crown or its representatives, the State of Victoria, sit within that conversation. It is not why we are here. Fire is a part of that conversation. It may be a small part in the scheme of things. If I read a list of everything to do with colonisation in Australia,
10 fire would be just one subject in the thousands of issues, but the role of fire, for the context of this conversation, the role of fire, we can see the benefit. We can see the benefit. The benefit is not just for us, it is for everyone.

15 And I will just quickly point to the fact that my grandfather, Banjo Clarke, probably had the biggest influence on myself and many of my cousins growing up. His grandparents were alive when Europeans came. Now, you think about that, my grandfather, his grandparents were alive when Europeans came. And he heard the stories about what that meant, and he said, very first thing the Maar endeavoured to do is indoctrinate or introduce these new people into Maar law, and in doing so,
20 advise them and inform them of what their obligations are. If you are going to stay here, you have obligations to Country, and this is what you need to know. That is what this is about. That is our role here today, and that is why we do what we do.

25 So in the context of fire, this will always go, but we need to acknowledge - the knowledge and the State as its agent needs to acknowledge that they are colonised and they need to decolonise. And they need to come to the party with that in mind.

MS MULLET: Talk about needs for the system to change, but ultimately the system's working perfect, because it is a colonised system and it is doing exactly
30 what it needs to do in the way it is intended to do. We can continue to try to battle to change the system, or really ultimately what we need to do is remove the system, and we need to remove the system to be able to allow so that our lore can be the leader for the system, and the lore is actually guiding us what needs to be done and how we need to doing business, not the other way around. So we need to really think and
35 realise we can't - we're not here to change the system we are actually here to get rid of the system.

MR GOODWIN: Matt?

40 **MR SHANKS:** Build a new system that is appropriate for Country, and that needs to be based on our lore, our knowledge, our practice, our customs, and I mean that's what you were saying, that's what we attempted from day 1. In order to do that we need meaningful relationships and support and commitment from the State and that colonial entity. We need - obviously there's the resources thing, everything sort of
45 takes resources. Some resources are money, some are people. Our best people are often taken by the State. They go over and work for them. And how can we sort of provide meaningful kind of career pathways for our people as well.

We need to develop culturally safe governance, we need the sharing of power, the sharing of authority, we need trust, all these kinds of things enable us to kind of sit together, work together and reflect together to build that new system, and you know,
 5 I think often people - non-Indigenous people get challenged by decolonisation. They kind of view it in their own lens which is that colonial lens of invasion, domination, destruction, and we are trying to work together. It is about kind of deconstructing and reconstructing in culturally informed ways of place and learning from mother.

10 So that comes from meaningful relationships, and it's not just at a local level, it's not just a regional level or a statewide level, it is at all levels, and it is in our systems as well. We need to build those together. We need to ensure as well, there is a whole bunch of things, but yeah, in order to effect change in fire, we need to effect change in all things, because there are - there are practices and responses and what have you
 15 in and around the healing caring for Country, as we would describe it, that are non kind of fire, as an element, related that are above and after, so we need to consider all of this holistically. And that is where Indigenous people need to be leading. When I say "lead", it's not that we want to replace the State. We want to share those responsibilities and those obligations. We want to share our obligations and help the
 20 State in theirs. And that is what we have always been saying. That is what my Elders have taught me, and that is what I try to activate and support the Taungurung to activate.

MR GOODWIN: We will move to a closed session after a short adjournment which
 25 will probably be about 10 minutes - not the adjournment, the short session. Did the Commissioners have any questions that they wanted to ask in the open format before we proceed? No. Thank you. I would just ask for a no more than three-minute adjournment while we shift into a closed session.

30 **COMMISSIONER LOVETT:** I think also to give the opportunity to thank the panel. People on the live stream, we'll finish up in a minute, but just thank you the people in the panel for coming in sharing their knowledge, wisdom, resistance to the system and I just want to appreciate your time as well. You shared a lot of
 35 knowledge with us today as well, but also the fight for Country as well and the continual practice that you are upholding our ancestors' knowledge and what they have passed on to you and so forth as well. I just wanted to recognise that before we formally close as well. Thanks. Just adjourn for three minutes quarter past.

40 <CLOSED SESSION EVIDENCE>

<CONCLUDING REMARKS>

45 **COMMISSIONER LOVETT:** I don't know if any other Commissioners want to say anything?

Just again, just reiterating what we said before, thanks for coming forward and sharing this and obviously we have got it. We have listened in and obviously taken notes...

5 [Redacted reference to closed session evidence]

We want to try to - always trying to strive to help also our people heal through this process and not create further trauma as well, and we are always continually looking to refine our processes.

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We don't always get it right, but we will certainly always look to reflect on how we can do things better, whether it be witnesses coming before in their testimonies, but also in supporting people when they leave through the doors and coming in and sharing their information as well, so we are certainly, under no circumstances, not looking to retraumatise people.

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Sometimes we can't manage what people are going to also share with us as well and that is not to make excuses, that's just - these things are live streamed, they are in running and they are you know as I said live, so we can't control and we are not trying to control, but at the same time we are also trying to minimise the continued trauma and the impact on our people as well.

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So again, I want to reiterate to you mob that we will always reflect on our processes and try to do better in the future where we can as well. But again, just thank you for your strength your wisdom, your knowledge, and I thought that was - not to compare it to other panels, but that was, you know, the panel more broadly and the information you shared with us, was really powerful, really exciting and certainly not a dull way to finish up on a Friday, actually.

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I think there was a lot education out there to society and people more broadly about the importance of keeping culture alive, and then also, you know, making it thrive, really, and being able to connect with people in that tangible way of, you know, what fire actually is and what it means in a more deeper way around, you know, not only for managing Country but also to hunt for food and sustainability and so forth. There are many parallels to sustainability and so forth.

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Yeah, just really appreciate it again and safe travels on your ways to your various Countries where you live, work and advocate for. Again, (speaks Dhauward Wurrung) thank you.

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<THE HEARING ADJOURNED AT 5.14 PM