



TRANSCRIPT OF DAY 2 – PUBLIC HEARING

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

MONDAY, 28 MAY 2024 AT 9.36 AM (AEST)

DAY 2

HEARING BLOCK 7

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<THE HEARING COMMENCED AT 9.36 AM

CHAIR: Good morning. Welcome to today's hearing of the Yoorrook Justice Commission. We are continuing the Hearing Block number 7, that is the inquiry
5 into historic and ongoing Social Injustice for Victorian First Peoples. Before we commence, I'd like to ask Commissioner Hunter to do the Acknowledgement or Welcome to Country.

COMMISSIONER HUNTER: I would like to acknowledge we are on the lands
10 of Wurundjeri, I pay my respects to Elders past and present, to all Aboriginal people online or in the room. I would also like to remind people that, due to yesterday's content, look after themselves and their wellbeing, and also there's the 13YARN line, if anybody is really struggling after yesterday's content. May Bunjil watch over us as we conduct Aboriginal business and Wominjeka.

CHAIR: Thank you, Commissioner Hunter. Could we have appearances, please,
15 counsel.

MS MCLEOD SC: Good morning Commissioners. I appear to assist this
20 morning. I thank Commissioner Hunter for her Welcome to Country. I acknowledge that we're on Wurundjeri lands that were never ceded. I pay my respects to Elders and ancestors and express my thanks for their courage in searching for the truth over generations.

MS CAFARELLA: Good morning, Commissioners. Gemma Cafarella,
25 appearing on behalf of the State of Victoria. I would like to thank Commissioner Hunter for her Welcome to Country, and on behalf of the State of Victoria, I acknowledge that today's hearing is being held on the lands of the Wurundjeri people. I acknowledge them as the Traditional Owners of this land, and
30 I acknowledge that sovereignty has never been ceded. The State pays respect to Wurundjeri Elders past and present, Aboriginal Elders of other communities and all other First Peoples who are here today participating or watching online. Thank you.

CHAIR: Thank you.
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MS MCLEOD SC: Thank you, Chair. If the Commission pleases, I now call
today's first witness, Professor Ray Lovett. Professor Lovett, are you comfortable
40 with me calling you Ray this morning?

PROFESSOR RAYMOND LOVETT: Yes.

MS MCLEOD SC: Professor, do you undertake to tell the truth to the
Commission this morning?
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PROFESSOR RAYMOND LOVETT: I do.

MS MCLEOD SC: I may revert back to Professor as a matter of instinct, but you are comfortable with Ray?

PROFESSOR RAYMOND LOVETT: Yes.

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MS MCLEOD SC: Ray, I want to start by asking you to introduce yourself to the Commission, and to those following online in a culturally appropriate way.

PROFESSOR RAYMOND LOVETT: (Speaks Ngiyampaa language) my name is Ray Lovett. I'm a Ngiyampaa man from western New South Wales, first and foremost. I also would like to acknowledge Country, the Wurundjeri peoples, and pay my respects as well, as a visitor to your Country. It's very important, you know, to hear that Welcome from you, Sue-Anne. But just reciprocating my acknowledgement and where I am from to be safe in this space today.

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I'm also a professor of epidemiology. I work at the Yardhura Walani Centre, the National Centre for Aboriginal and Torres Strait Islander Wellbeing Research at the College of Health and Medicine at the Australian National University. My primary research expertise is in settler colonial studies, including racism's impact on health and wellbeing of Mob. And I also, on the flip side of settler colonial risks, look at the protective and buffering effects of culture revival, maintenance and participation as a protective factor against racism and settler colonial determinants. So they're my two primary areas of expertise.

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25 **MS MCLEOD SC:** Thank you.

CHAIR: Thank you, and welcome.

MS MCLEOD SC: Ray, today I want to have a discussion around health and equity, and the persistence of health indicators that indicate Indigenous people in this country not meeting life expectancy, morbidity and other targets. In 2007, the national Closing the Gap program was introduced to address discrepancies in decreased life expectancy and increased morbidity rates amongst Aboriginal and Torres Strait Islander peoples compared to non-Indigenous peoples, and the stated objectives were to create equity in those statistics by 2030. Yesterday we heard evidence in relation to the Closing the Gap program, and it was said those things are not on track. If they don't move more quickly, then we would not be reaching the 2030 target.

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40 So there was evidence in relation to health and equity and progress towards those goals of equity being elusive. So can I start by asking you about your perspective on the cause or causes of health outcomes and the role that racism plays in health outcomes for Aboriginal and Torres Strait Islander peoples in this country?

45 **PROFESSOR RAYMOND LOVETT:** So I have a couple of views on Closing the Gap as a policy initiative, which is informed, I guess, by my epidemiology mind. I'll put it that way. And I guess the premise for Closing the Gap, while

worthy in terms of creating equity of outcomes, there is a problem within Closing the Gap of where the gaze of what is the standard for outcomes is. And that is for us, as Aboriginal and Torres Strait Islander people, to be brought up to the standard of non-Indigenous people.

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So the gaze really seems to refer again to non-Indigenous people as the standard bearer of normality. So that's a starting point that I think is incorrect. And then if we think about what that means in terms of investment and resources allocated under the policy to create equity, there are only two things we can do. The first is to invest in programs and services that increase or accelerate outcomes for Aboriginal and Torres Strait Islander people at a faster rate than non-Indigenous people, which encloses - or, you know, the lines come together; or we make the health of the non-Indigenous population worse, which also brings the line together.

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When I look at resources allocated for Closing the Gap, I don't see the magnitude of investment at what is currently recommended by the evidence at three to six times the rate of the non-Indigenous rate in any policy setting, whether that's Medicare services, funding to community-controlled services and the funding formulas that are used to calculate investments into Indigenous health affairs in particular. We are not seeing that investment, even though we have had those recommendations for the last 20 years about the amount of investment required.

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And then the other side of things, making the health of non-Indigenous people worse to close gaps, is just an absurd proposition. So, really, the answer is only one way but we're not seeing that. And the evidence is there to highlight that. We can skirt around the issue all we want, but, you know, we've been divesting from Indigenous health and Indigenous affairs over a long period at the Commonwealth level. Jurisdictionally, it's a bit more of a mixed bag.

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So until we see that investment change, I'm afraid we won't see closing of gaps or inequity reduced. But it also points to the broader issue that you just raised, is why can't we see our way to investing three to six times the rate we need to invest in Indigenous health and Indigenous affairs more broadly? And there's this notion that, you know, Indigenous peoples might be getting something additional that non-Indigenous people don't in this country, and that's founded in notions of racism, where we conflate equality, which is everyone being treated the same, with the policy imperative, which is equity.

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Two different things. So if we are serious about equity, we need to invest to bring people up to the same standard.

MS MCLEOD SC: Setting aside the Closing the Gap differential targets, how should we be framing this conversation around equity?

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PROFESSOR RAYMOND LOVETT: Well, exactly as I just said, we need additional resourcing and investment to create it. If we're not doing that, we're not

serious about it, and we need to deal with the underlying issue that stops us from investing in equity, which is racism. If we have to talk about racism and why we can't invest or why we can't create equity, we need to talk about settler colonisation and processes that have occurred over history but are also continuing
5 because settler colonisation is an ongoing project, as is racism.

So we haven't been able to, one, talk about racism, the R-word as we describe it, but more broader than that, racism is but one manifestation of settler colonisation, and we definitely don't seem to want to have a conversation about that in this
10 country either.

MS MCLEOD SC: Well, let's start that conversation.

PROFESSOR RAYMOND LOVETT: Happy to.
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MS MCLEOD SC: And I'm interested in exploring the causes of that health inequity, and you, your area of expertise is society colonisation and those impacts. So, what were the mechanisms of settler colonisation that resulted in health
20 inequity?

PROFESSOR RAYMOND LOVETT: I'd reframe that slightly around what were, but what are also continuing -

MS MCLEOD SC: Yes.
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PROFESSOR RAYMOND LOVETT: - processes. So we, as Australians, might understand some of that history, but the primary purpose of settler colonisation in the context of Aboriginal and Torres Strait Islander people in this country, there were two mechanisms. So, one is to remove us physically from the
30 land, because the land is the resource that was acquired by settlers to enact their resource base. But there was a problem still. We were still around. So Wolfe talks about the elimination of the native by these two processes of physical removal to the margins and then also the assimilation policies around, well, if we can't get rid of people, then we absorb them into the population somehow.

35 So that's a particular form of colonisation called settler colonisation. The CANZUS countries all enacted those processes, so they learnt from each other along the way. When we look at the history of the CANZUS countries - so Canada, Australia, New Zealand and the US - and Australia, as one of the last in
40 that process, learnt the most from those other countries. So it was enacted perhaps here the most thoroughly.

MS MCLEOD SC: Those CANZUS countries, were they also pursuing the resource of the land or were there other objects in mind?
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PROFESSOR RAYMOND LOVETT: Absolutely. It's about the economic base for, you know, western civilisation is - land is the largest resource if we think

about it even in contemporary times, in that if you think about agriculture, mineral resources, and those sorts of things, they are all associated - you have to have land to do that. And so the whole economic base of a society is drawn from land and the resources it provides to society. So that was the primary objective here as well.

MS MCLEOD SC: The response to that early dispossession, if I can use that neutral term without meaning to strip away the atrocities that were associated with that, the response to dispossession included protection - so-called, assimilation of people on missions -

PROFESSOR RAYMOND LOVETT: Yep.

MS MCLEOD SC: - and stripping of language, culture and other practices. So what's your view about that project? Designed apparently for protective purposes.

PROFESSOR RAYMOND LOVETT: Protection of who, would be my question back to that. So I often find in Indigenous affairs in particular, when we look at the labels and the titles given to things - a bit like Closing the Gap in some sense - is who is the reference population or group here that we're talking about. So you could argue that when we're talking about protection as a policy, it was protection, again, of the non-Indigenous settlers' way of life.

And so it's always interesting to me when we talk about historical policies like that and think of that from an Indigenous frame about exactly what was trying to be achieved. So you do not protect people by rounding them up en masse, and if you don't shoot them or murder them, you then transport them miles away from their homelands, put them in segregated communities, ask them - well, you don't ask them. You tell them what they will eat, how they will behave. You tell them when they can leave that segregated area. In fact, you ask them to sign - what were they called - we call them dog tags to say that if you leave this area, you are never able to return to your family and never able to associate.

So I ask the question: Who's being protected in that system? If we enacted that now, what would we say about who's being protected? So, again, I go back to the intent. And a lot of the justification for that process, which is around the missions and reserves, was based on racist ideology used to justify elimination or removal of Aboriginal and Torres Strait Islander people from their land. They were moved long distances from where their homelands were, segregated, legally not allowed to leave that segregated area, all on the basis - if you look at any of the Protections Board's minutes which I have done so - that are founded on racist ideology that Aboriginal people were not intellectually capable of making decisions for themselves. So, therefore, the State had to protect them from making bad decisions by withdrawing their ability to make any decisions. I'm not sure that's protection.

MS MCLEOD SC: Your expertise is in epidemiology, a term that we all became somewhat familiar with during COVID. But could you just explain to the Commission and those following how the study of epidemiology can, and does, look at this history as a relevant frame for health inequity?

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PROFESSOR RAYMOND LOVETT: I belong to a particular scientific endeavour that has a pretty horrible history in terms of Aboriginal and Torres Strait Islander health in this country. And so the primary mechanism of determining our lack - in terms of biology, intellect, worthiness - has often been defined by epidemiology or other social sciences that use these techniques.

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So I'm a bit of an outsider on the inside because I also want to understand these scientific techniques and endeavours, and perhaps, in some little way, use them against the science but also the prevailing narrative that historically has come from epidemiology. Most people think - to give you an example of that, most people think when we look at Indigenous health and wellbeing outcomes - and one of the really pervasive things that comes from statistics around Closing the Gap is when we look at outcomes, whether they're social outcomes, employment - for example, income - but then health and wellbeing outcomes as well like life expectancy, we see this line "Indigenous" and then we see this other line "non-Indigenous".

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And, unfortunately, what happens in people's minds they think Indigeneity equals disease, and non-Indigeneity means the absence of disease. It's a really weird artefact of statistics. But those things are very much conflated. When we think about what Indigeneity or Indigenous status means in our statistical productions, Indigeneity really means that history that I just spoke about, our present, which we still know health equity has a long way to go, and we - so we - I know that Indigeneity as a concept and a marker on a statistical line represents all of those things.

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It is not a biological innateness or deficiency. In fact, one of the things I often think about, when I think about Closing the Gap, the Indigenous versus non-Indigenous lines, is what it represents for me is how well settler colonisation has been implemented in this country. So the larger the inequity, the more settler colonisation is having an impact, and the racist, or racism present in our current systems, how much they are impacting on the lives of Aboriginal and Torres Strait Islander. But that's just me, how I think about what those lines mean.

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But Indigeneity as a statistical construct means all of those things, and I think we would do better in Australia to understand that, rather than thinking that it manifests in our biology, which is often how it's conflated. A lot of scientific studies, more modern epidemiology has teased that apart to demonstrate that equity is the result of settler colonial processes, the legacy of those histories, but also what that means in contemporary times as well. But epidemiology has still got a long way to go to tease that apart further.

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One of the artefacts of racism in science is if we don't like what we might be trying to investigate, we don't invest in it. So the field of settler colonial studies in Australia and any of the CANZUS states, investment has been very poor. Ask the question why is that. If we really want to understand what is creating inequity, we really need to interrogate settler colonialism and the racism that has manifested from it.

MS MCLEOD SC: The conflation of Indigenous personhood with disease that you're talking about and the persistence of that conflation over history, have you analysed that from a research perspective?

PROFESSOR RAYMOND LOVETT: Yeah. You know, obviously that's - a lot of my work is trying to pull that apart. Like, you know, what does Indigeneity in a statistical concept mean? So, you know, there is some work that I provided in-confidence to the Commission, not published yet but will be soon hopefully, where we have been able to pull both what we call distal settler colonial risk factors. So at the moment where I've got data on five of those, and the distal component means it's been in generations above you. So we are looking at not me directly exposed but the generations above me, so whether it's my parents, my grandparents or great-grandparents.

And then we have also managed to compile together 16 proximal settler colonial risk factors as well. So they're the things that have been experienced by Aboriginal and Torres Strait Islander people in more contemporary times. And the intergenerational - you would have heard of intergenerational trauma. So that, for me, is the distal component, that's in generations previous, and the proximal is now.

MS MCLEOD SC: And just starting with distal, is the intergenerational trauma the primary factor - risk factor there?

PROFESSOR RAYMOND LOVETT: Well, no. We have five of those. So we have talked about one, so the forced relocation, for example of your ancestors, is one I've collected data on from over 13,000 Aboriginal and Torres Strait Islander people across the country, for example. So whether people were forcibly relocated, whether people are unsure about who they are is a by-product of forced relocation and removal. I'm fortunate. I'm able to say I'm a Ngiyampaa person. There are many, some 40 per cent in the Mayi Kuwayu Study, which is the study I direct - a cohort study, an epidemiological study - that are unable to identify their tribal heritage, for example. So that is a distal settler colonial risk.

The Stolen Generations, you know, which is the common language we use right across the country, so we've managed to collect data from those 13,000 people on whether it was a grandparent, whether it was a parent in those previous generations. Uncles, Aunties and so forth. So they're the ones that we have currently got data on from just over 13,000 Aboriginal and Torres Strait Islander people.

When we are talking about equivalents in terms of proximal settler colonial risks, you know, people feeling disconnected from culture is a direct result of settler colonial processes. Feeling dislocated from Country. Country, as we've all talked
5 about this morning, is a primary foundational cultural responsibility and part of identity. So feeling disconnected and dislocated from that is also a settler colonial risk.

10 Having children removed. You being removed, and those sorts of things. Experiencing racism is also a proximal settler colonial risk. So we, in our team, the team that I head, have managed to compile these 21 indicators right across the country and have put that data together to look at how that impacts on some key health and wellbeing outcomes and the reading's, as you can imagine, not very
15 pretty.

MS MCLEOD SC: Just so I understand the scope of the study, you said 13,000 respondents.

PROFESSOR RAYMOND LOVETT: Yes.

20 **MS MCLEOD SC:** That's the cohort. Approximately how many for Victoria?

PROFESSOR RAYMOND LOVETT: I think it's just over 1,000 people in
25 Victoria.

COMMISSIONER HUNTER: I just want to point out that that's quite a large study of getting Mob, for instance, to respond. So I just want to make that point, that when I saw that, I was quite surprised, and I think it's great that we have Mob
30 responding. So I just want to make that point that we don't usually get that response.

PROFESSOR RAYMOND LOVETT: No, we don't. It does highlight to you, I think, or I like to think, when it's Mob conducting the research - when we spent
35 four years talking to Mob all over the country about what questions we should ask and what relates, what keeps us strong, what keeps us healthy but also what impacts our health and wellbeing and you spent four years doing that with community all over the country, then you tend to get better engagement. I think in science and research, we have been saying that for quite some time as well.

40 But, yes, are you right, Sue-Anne. It's the largest Indigenous cohort study I'm aware of in a settler colonial nation certainly by a long shot. The sample of the group of participants is double that that's included in the Australian Bureau of Statistics National Aboriginal and Torres Strait Islander Health Survey for
45 example. They recruit about 6,000 people. We managed to recruit 13,000.

MS MCLEOD SC: So as Commissioner Hunter says that's a significant sample. And can you generalise to the 1,000 Victorians the findings of that study?

PROFESSOR RAYMOND LOVETT: So when we look at prevalence of exposure, for example, we can't generalise what the prevalence of an exposure is - so, say, forced relocation, if we are just looking at that. But when we are doing
5 internal comparisons, so exposure outcome relationships, so if the exposure is forced relocation and the outcome is life satisfaction, for example, or higher or lower levels of life satisfaction, generally, those comparisons are generalisable to the entire - not just the sample but to the entire Aboriginal and Torres Strait Islander population. So that's called external validity. It's a well-known
10 phenomenon in cohort studies that you can generalise the exposure outcome relationship across an entire population, which is one of the powerful elements of a cohort study like this.

MS MCLEOD SC: In terms of that external validity process, are you adjusting
15 for variables like age, education levels, things like that?

PROFESSOR RAYMOND LOVETT: Yeah, so there are some things that we do adjust for, or to remove the effect of. So some things we know might be differentially experienced by people, particularly by age. So, obviously, we would
20 hope that younger people are not exposed to as much racism as older people. In fact, in the cohort, we find it's the opposite. The younger people report it more than older people, but we think that's an effect of blunting, it's called, where the older you get, the more exposed you are to something, the less likely you are to recognise what that is, and its impacts on you change.

25 So we do adjust for things like that. We do not adjust for things that standard epidemiologists would have us adjust for, because they are also involved on the pathway, we call it. So education is also impacted by racism. So you would not adjust for education in a standard regression model like we do in exposure
30 outcome relationships to remove the effect of a higher education attainment, because racism is directly related with educational opportunity as well, and you should not do that.

MS MCLEOD SC: Do your findings corroborate other smaller studies looking
35 specifically at factors like racism, the effect of racism and other features, that you mentioned, either distal or proximal?

PROFESSOR RAYMOND LOVETT: So there hasn't been a study anywhere in the world that I can find around the distal versus proximal. So we - our results
40 might be the first on that. In terms of just exposure to racism, we do find that exposure is similar to other small-scale studies that - there has been one conducted here in Victoria, for example where we're seeing that reports of - the concept we measure is everyday discrimination, EDS.

45 I have to also highlight that this is a form of interpersonal racism as well, so people answer a series of questions on experiences they have had. It does not capture what we know is much more pervasive in terms of structural racism. So

we don't measure that. It's much harder to measure that. But we find for those - well, I've got the first paper we published on that, which had 10,000 people in it only, which is still quite a large number - that any experience of everyday discrimination was reported by just over 60 per cent of the entire 10,000 people.

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That varied quite markedly by whether you lived in urban or remote areas; much higher in remote areas, as you would expect, and a few other attributes was different.

10 **MS MCLEOD SC:** Can we make that link between the interpersonal racism you are talking about, people's experience of racism, and structural racism?

PROFESSOR RAYMOND LOVETT: The two go hand in hand in my view. You know, so people try to disentangle structural racism from interpersonal racism, but structures are made up of people. People build structures. And if 15 those people that are building structures, whether they're our social services, our governments, these are all socio-political structures. They are made up of individuals. Those individuals hold racist views. They then embed them in those structures through policies, procedures, which are often exclusionary. So it's not 20 any great logical leap to say that interpersonal manifestations of racism are reflected in structures.

MS MCLEOD SC: Just to come back to the features you have described as distal and proximal, is there a clear connection between those early features or 25 multigenerational traumas, things of that nature –

PROFESSOR RAYMOND LOVETT: Yeah.

MS MCLEOD SC: - and proximal, or what we see in terms of health outcomes today? 30

PROFESSOR RAYMOND LOVETT: So when we look at those people who - it's 63 per cent of people in that almost 13,000 sample have identified a distal risk factor, at least one. Many people have identified multiple. So when we look at 35 those people's outcomes, whether it's high psychological distress, for example, we still see residual impacts across a whole bunch of health and wellbeing outcomes. So a 10 per cent increase or 11 per cent increase in reporting higher levels of psychological distress, which is a precursor for many clinical mental health conditions. So that's just one example. 40

So these are people who have not even experienced that historical risk factor but there is still that association there. It remains. When we look at some other outcomes including if we look at - sorry, I'll just refer to my notes - reporting of 45 poor general health, we see a 20 per cent increase in reporting of poor general health, which is a universal globally accepted indicator of health measurement.

We see a 33 per cent higher level of reporting in low levels of life satisfaction - again, another global indicator, well used across many populations - in that group that has reported any of these distal exposures.

5 **COMMISSIONER HUNTER:** And that's just not happened to them directly. Again, that's the intergenerational.

10 **PROFESSOR RAYMOND LOVETT:** No, that's right. These things haven't happened to them. It's been to their family members. So that's just an example of what we're seeing in some of our results for the first time here in Australia. Like I say, similar studies have not been conducted elsewhere.

15 Then when we look at those same outcomes, if I can just add to that, when we look at proximal - so it has impacted you - what we see there is the same results but the order of magnitude is just much greater. So instead of a 30 per cent increase in poor life satisfaction, we're moving from that to a 64 per cent increase in poor life satisfaction if it's more proximal, so directly impacted by you.

20 **MS MCLEOD SC:** Has your work also considered protective factors?

25 **PROFESSOR RAYMOND LOVETT:** Yes. So we have - in my introduction, I talked about settler colonial risk as an area of expertise but also when we did that four-year development process with the Mayi Kuwayu Study, it was very much looking as an Indigenous person and team conducting this study. We know our survival has been because of, you know, strong - for many of us, or some of us who have been able to maintain or reconnect those cultural practices or revitalise those things, so we wanted to capture the essence of those things as well.

30 So we developed a bunch of what we are calling cultural wellbeing indicators as well. And so that's the other work we are doing at the same time, because we don't want to just say how bad things are; we want to say, well, these things help or don't help in this process. So, for example, some of the work we've been doing on language - Aboriginal and Torres Strait Islander language revitalisation, for example, show that there are protective effects against mental health conditions, for example.

40 There is - you know, it is complex, to tease apart, well, if you're going through revitalisation, the trauma of loss and then the trauma - there is trauma involved in revitalisation, but that's an Indigenous desired outcome. It's not foisted upon us. Then there is also some trauma around people wanting to reconnect and maintain cultural practices as well.

45 Then for some people where land tenure has really changed and are unable to participate, again, you know, if we're saying that is the only solution for people, that's also quite dangerous because if people are not able to engage in those practices on Country, then we may be adding further harm to that, if there's no possibility of that. So we need to be thinking about all of these things.

MS MCLEOD SC: And would you put the pursuit of self-determination in the same bucket?

5 **PROFESSOR RAYMOND LOVETT:** Well, when we look at our results in the research, that's one of our questions or one of the outcomes we are very interested in. We talk about it in terms of life control. So it's that same concept of self-determination. We are very interested in that in our research. And it's interesting because whether it's the distal or proximal settler colonial risk, when
10 we look at the impact on life control or poor life control in particular it is one of the largest effects we get in our results, that racism and these risks impact on poor - rates of poor life control the most.

15 So, you know, settler colonisation and exposure to racism has done its job. We are talking about people with high levels of exposure to racism and these risks. We are talking about highly compounded reporting of poor life control, in the order of, in some instances here, when I'm looking at exposure to racism, you know, children being removed, we're talking two to three hundred per cent increases in reporting of poor life control, for example. So it is having huge
20 impacts.

But when we talk about cultural wellbeing as a buffer, or as a protective factor, it is one of the very things that improves the fastest when people are exposed to language, to Country and those sorts of things. So it has the ability, it seems, to
25 reverse some of those impacts or buffer them when these other things are occurring or co-occurring at the same time.

MS MCLEOD SC: How widely recognised is that fact amongst, say, the medical profession.
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PROFESSOR RAYMOND LOVETT: I'd have to say it's not really well recognised at all. As Indigenous people, we talk about self-determination a lot, or agency, fate control, life control. However we want to frame that. We talk about that first. Governance, decision-making, power. But if we put it in the health
35 context, if - we also know there's a broad literature on if clients and people receiving services feel that they have control, feel they are able to direct service delivery and how that occurs, then outcomes are much better. So it's, again, not a large logical leap to make that if we ensure that those processes are within these systems then you do get better outcomes.
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It just happens to be in a slightly different cultural context, and we seem incapable of being able to accommodate that in our service systems, unfortunately.

COMMISSIONER HUNTER: Would you say it's more of a - when treating for
45 any type of health, so there's more a medical model and then the culture is to bring someone in that's an add-on, because you bring the Aboriginal person in (crosstalk).

PROFESSOR RAYMOND LOVETT: Yes, it seems to be how it manifests in our current health system. It is - you know, it's very much that biomedical model where - and it's an artefact of the training of health professionals as well. I used to
5 be a health professional before I became an epidemiologist as well. And the training you receive is, you know, what causes the illness either in terms of pathology, and then how do you treat it to get rid of that pathology.

So that's often in isolation of the individual and the context in which they live.
10 You know, that's why some people say social workers might have been invented to deal with all those other social aspects of people's lives. But then when we add a layer of cultural continuity or cultural care, again, we see that divergence out of the medical model to another service sector that provides that component of it.

15 It would be really nice - which is what a lot of the policy documents are trying to do around cultural competence of health professionals and the like - that people actually are able to not provide cultural care - we don't want non-Indigenous people providing cultural care - but at least being able to facilitate care that does no harm, which most health professionals have agreed to provide in their oath. So
20 I think you're right, that does go on quite a lot.

The Aboriginal community-controlled health sector has done a lot over the years to try and ameliorate that. But, again, when you look at who has primacy and power in the health professions, we all know who those people are, and often there
25 is a tension. I've worked in Aboriginal community-controlled health care as well. There is a tension between who are the experts. Is it clinicians or is it the cultural knowledge holders within a community, and how do you bring those two things together, has always been a tension, I think.

30 **COMMISSIONER HUNTER:** Yeah, we did hear evidence yesterday around not being taken seriously with - because it's not researched enough and that the clinical model is always put above the cultural model.

PROFESSOR RAYMOND LOVETT: Yes, so we call that epistemic violence,
35 so it's around whose knowledge counts, yes.

MS MCLEOD SC: I want to ask you about the proximal factor you identified as racism. In your work, are you able to say to what extent is racism responsible for
40 health outcomes?

PROFESSOR RAYMOND LOVETT: So we did publish a piece in The Lancet at the end of 2022 where we tried to - we used a technique called a population attributable fraction. What that means is, we take an exposure, we look at
45 a particular outcome, and we try to attribute how much of that outcome is alone attributable to that exposure. So the exposure in this instance was interpersonal racism - again, from this nearly 10,000 Aboriginal and Torres Strait Islander

people we used in that analysis - or it might have been just over 8,000, when you exclude missing data.

5 So the exposure was interpersonal racism. The outcome was high psychological distress, that precursor to some of the clinical mental health outcomes. So we were trying to tease apart, using this particular technique, how much of that high psychological distress is attributable alone to racism exposure?

10 Now, the caveat on this is, again, you could argue that racism is ever present and 100 per cent of Aboriginal and Torres Strait Islander people are exposed to it, but we are using very conservative approaches here. Epidemiology and sciences, we are very conservative. So we only took the information from people that reported their interpersonal experiences. So this is likely an underestimate, is what I'm trying to get to.

15 And so when we looked at what the gap in that outcome is, so we found that half of the difference in high levels of psychological distress were attributable alone to racial exposure, so 50 per cent.

20 **MS MCLEOD SC:** Just some explanation of terms. You've talked about interpersonal racism and structural racism.

PROFESSOR RAYMOND LOVETT: Yes.

25 **MS MCLEOD SC:** Could you describe what structural racism is?

PROFESSOR RAYMOND LOVETT: Structural racism is when your systems are embedded or codified with racist elements. So that could be the design - it's designed to limit opportunity for service, employment, or engagement in systems. 30 So it's usually policies and procedures that people adhere to rigorously, I have to say, in organisations. And the unintended - well, intended, unintended consequences of that for particular groups is it manifests in an inability to access or use services appropriately.

35 So an example - I will give you an example in research - is when we conduct research on a particularly prominent health condition for Aboriginal and Torres Strait Islander people, cardiovascular disease, and if you - there's a new treatment which is quite promising, but the eligibility to participate is for those aged 45 40 years and above. Now, from my work, I know that cardiovascular disease risk starts for Aboriginal and Torres Strait Islander people much earlier, from 20 years of age. So we have a whole period from 20 to 45 that Aboriginal and Torres Strait Islander people are not able to, not eligible to participate in this research because their evidence of when this risk starts has not been incorporated into the science. That's just research.

45 People think that just setting eligibility criteria - I love looking at eligibility criteria for things, because that's often where it starts. If we look at eligibility

criteria for services, programs and the like, it often begins there. And what services are trying to do is limit use. Not include, limit. And so for particular groups in society that are meant to service everybody, as soon as any difference in those factors that may be present to make you eligible, it becomes discriminatory,
5 exclusionary.

MS MCLEOD SC: So just to identify one of the articles that you may be referring to, there's an article that you've published in the International Journal of Environmental Research and Public Health, 'Prevalence of Everyday
10 Discrimination and Relation with Wellbeing Amongst Aboriginal and Torres Strait Islander Adults in Australia'. So just so we identify that as one of the research papers you've undertaken.

PROFESSOR RAYMOND LOVETT: Yep.
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COMMISSIONER HUNTER: Can I just - that's a really, really good point and that's a point that we heard a lot from, from our women in prison about being excluded from being able to access programs that would help them get released earlier, or would help them get care or would help them - actually our men as well,
20 to be able to move through the system quite easily or have better chance of being paroled earlier.

PROFESSOR RAYMOND LOVETT: It goes back to my point earlier around what are we trying to do? Equality or equity? Right? So equality means
25 everyone has the same rules and therefore eligibility criteria. It's not what we're trying to do here. What, again, is equity? And what that means is eligibility has to be tailored specifically to the group you're interested in providing services for. If we're not doing that, we're not serious and we're not doing things that we should be doing. We're not meeting our obligations to what we said we would do.
30

COMMISSIONER HUNTER: If we talk about a lot of health eligibility to access things, then we are excluded from a lot of the norm is, the mainstream population level - you know that line you were talking about earlier?

PROFESSOR RAYMOND LOVETT: Yeah. There's a term I use for that. I don't know whether I should say it publicly, but it's the tyranny of the majority. The problem we have in this country is as soon as we start thinking about different groups within society, we no longer become eligible for things, because what eligibility is built around, largely - and if you think about public health, the
40 greatest good for the greatest number. That's what public health is trying to achieve.

As soon as we create that notion, the greatest good for the greatest number, who are we leaving behind in that? If we are truly committed to equity, it shouldn't be
45 - we should have the greatest good for the greatest number, but we should also be catering to groups so that we have the greatest good for the greatest number; you know, that's everybody.

MS MCLEOD SC: I just want to share with you some examples of the evidence that Yoorrook has heard. These concepts of racism are challenging for many Australians, and I want to raise some of these examples with you in a broad sense and invite your comment on them. So Yoorrook has heard evidence of clients being turned away by health services without proper management of the condition; of discrimination and access to health services and infrastructure, for example, areas within hospitals, having to deliver babies on hospital verandahs, not being allowed inside; attendance of child protection workers at birthing units immediately after delivery and separation of mothers and babies in custodial settings; inadequate provision of health care medications and supports in custodial settings, or even from primary carers; police and corrective services response to public drunkenness, addiction and a punitive criminal justice response.

So they're some examples - I'm characterising the nature of the complaints - some examples of difficulties people have experienced that have come up in the evidence. Can I invite your reflection on the nature of racism in the work you've done and how it presents itself, the impacts it has on people?

PROFESSOR RAYMOND LOVETT: Sure. I mean, a lot of these situations are cyclical as well. For the first scenario, you talked about people being turned away, or not receiving the care that they need. We do measure that in the Mayi Kuwayu Study. But the fundamental underlying issue in terms of racism for that scenario would be whether Aboriginal and Torres Strait Islander people are seen as worthy of receiving appropriate care.

MS MCLEOD SC: Just pausing there, I mean, it might be shocking to a health practitioner to think that they had this attitude. It might be shocking to others to think that health practitioners are acting in this way.

PROFESSOR RAYMOND LOVETT: Well, if you look at the underlying racist narrative that goes on around Aboriginal and Torres Strait Islander people generally - so this is where I will use, you know, stereotypes, is that, you know, Aboriginal and Torres Strait Islander people don't look after themselves. So why, as a health care practitioner, do I need to. So people really need to interrogate why they don't provide service.

Now, I'm not saying that that is the case, but that is the perception that is widely held in society. We have to be real about this. If we're not able to look at this as a health professional - I used to work in emergency department. I definitely observed other health care providers, you know, not providing the service they needed to to Aboriginal and Torres Strait Islander clients because of, you know, "Well, if Aboriginal and Torres Strait Islander people are not going to look after themselves, well, why would I? "

MS MCLEOD SC: Where does that come from? Is it modelled by senior practitioners or is it innate in our community?

PROFESSOR RAYMOND LOVETT: I have to say it's innate in the community because these are general stereotypes held. Right? And whether you are a health professional, a senior clinician, many years of experience, you are also
 5 part of a society. If you are part of a society that holds these negative views about Aboriginal and Torres Strait Islander people - we know why these stereotypes are created; as I talked about earlier to eliminate, to assimilate - then if you're part of that society as a health professional, we also measure racism experienced in the health system as part of that same paper that you highlighted before, that it is still
 10 going on in these health systems and it is common.

So I don't accept at all that, as an educated clinician, you are any different to a member of society that holds these views about Aboriginal and Torres Strait Islander people. It is illogical to suggest otherwise. So that's the "worthy"
 15 component.

The next scenario you gave was that, you know, child protection services showing up at birth. So if we look - I've already talked about Stolen Generations. If we are looking at features of the settler colonial project and risk, then this is a morphing
 20 of that system because, again, the Aboriginal and Torres Strait Islander people, the widely-held view which we have evidence of, is that Aboriginal and Torres Strait Islander people don't look after their kids.

So any risk to what a healthy, well-adjusted child might be from birth, even in
 25 utero, is examined, scrutinised by these professions. And so you can imagine, if you've had your grandparents removed, your parents removed, the modelling of good parenting, that's also a settler colonial process. And then you're giving birth, you're worried about removal already, you've had limited opportunity through the education and employment systems, and you still expect that person to be a model
 30 parent when you've had all these distal exposures flowing right through to your contemporary life, yet we just expect people to be model parents. Are we serious? You know, so it is real for Aboriginal and Torres Strait Islander people and people giving birth, this concern.

35 In our data, we've - in the last 12 months - we ask a question. In the last 12 months has a child been removed from your care. 10 per cent of people are reporting that. 10 per cent. One in 10 children in the Mayi Kuwayu Study or participants are reporting removal of children in the last 12 months. It is not a lack of Indigenous parents being able to care for their children. It is a society and
 40 a system that has been systematically built and enabled over time to allow this to continue. Sorry.

MS MCLEOD SC: Not at all.

45 **COMMISSIONER HUNTER:** Don't be sorry because I think you've just summed up a lot of the evidence that we've heard and a lot of - a lot of what

you've been saying really, I guess, in a more nuanced way than I ever could, speak about how the system excludes.

PROFESSOR RAYMOND LOVETT: Yes.

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COMMISSIONER HUNTER: And is racist and before your child is even born - and we've heard evidence of people where the child - and I will say as early as two months, or maybe even less, of a woman ringing me giving birth who was judged on her history, and they were outside that door. So you've just explained that perfectly and thank you, because I think, you know, our parents need to hear sometimes that it's not them and that it is - they are good parents and there is a system. And I'm not sure if you know, Ray, but we have the highest rate in this State of child removal. So I hope that our parents are listening and can hear that it isn't them, the majority of the time.

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PROFESSOR RAYMOND LOVETT: And even - you know, just to reiterate that, and even, you know, when, you know, you do think you're not parenting well enough, that it's actually not their fault. You know, this is the other thing, that these systems are designed and set up to perpetuate this. And if there's never been a remedy to that system, investment in that system, investment into the family, you know, then it explains a lot.

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MS MCLEOD SC: I should add that in the child protection and criminal justice work that the Commission has undertaken, senior officials and responsible Ministers have acknowledged the inherent racism in the systems, including in the protective measures that they have undertaken using protective, again, risk assessment models.

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PROFESSOR RAYMOND LOVETT: Yes, so, you know, again just reflecting on this word "protection". So when the State makes a mistake, it's catastrophic. You know, it is often reported that way. So, again, a lot of these systems are designed to protect the State. You know, as a - yes, you do need to protect the State, but you also need to correct the State. And how do we do that? You don't want to get in that situation in the first - in the first place. You should be resourcing, investing in families and communities, to be functioning well within culture and autonomy. But there seems to be a real reluctance to do that.

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MS MCLEOD SC: I want to move, in a moment, to what do we do about it in terms of anti-racism strategies and what your observation is of what's working. I just want to pause there to see if Commissioners have other questions around the expression of racism or the prevalence of racism.

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CHAIR: I just want to make a comment, just to say that you are talking in a medical context and health and wellbeing context, but the legislation that enabled the behaviour of the people that came before with us were over 100 years, over 100 years. So there's a psyche within the population among some professionals, whether it be the legal, the social workers who did very well in the

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latter part of the legislation, when it was softened from protection, but the specificity of some of the earlier legislation has embedded attitudes in this country, in this State, that are hard to, you know, to be rid of, really. And it's embedded in some of our fellow people in Victoria, and you described it
5 beautifully from the health point of view.

I mean, we don't think deeply about that, but we have had the lived experience which are you capturing in this context, which is - really, it's some kind of evidence. It's so important.
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PROFESSOR RAYMOND LOVETT: Yes, I think that's a great point around the structural racism, just how embedded it is, you know. And you think about those laws that were created, the legacy of those, even though they may have been repealed. As you say, it lives on, often in the minds and practices of these
15 professions.

COMMISSIONER LOVETT: I want to make a comment on something you said a bit earlier that we have heard quite a lot of about systems and people designing the systems and structures: they didn't create themselves. We have
20 heard evidence around the lack of accountability on the system but also on the individuals who are implementing the system, whether it be child protection failures, whether it be deaths in custody - you know, we can keep going on. The health system, where we heard some case studies yesterday, a lack of
25 accountability in these systems, yeah.

But when our people muck up or doing something wrong or don't do anything at all but just be Aboriginal, look what happens to them. It's systematic racism. Also, you're at a truth-telling commission, so you don't have to apologise for
30 sharing the truth.

PROFESSOR RAYMOND LOVETT: Well, you know, sometimes it gets a bit personal.

COMMISSIONER HUNTER: I just wanted to ask, is there anything that particularly stood - I think you said you had 1,000 from Victoria - that you could
35 possibly share that stood out with your study, that you are able to share with us.

PROFESSOR RAYMOND LOVETT: Yeah, I think I can probably just share - I mean it reflects back on some of the questions around the types - how racism
40 manifests. So the most common - I've alluded to it before, about how Aboriginal people are perceived. So the intellectual inferiority which is why other people have to manage us because we are incapable of doing that. So, you know, that's
60 per cent of all the people in the sample, so that includes in Victoria as well, reported that. So that must be a horrible thing when people are thinking that about
45 themselves.

While that's coming from external forces, for example, when you start to internalise that, that must be a horrible thing to think about as well. The service - receiving service, again, it's 40 per cent of people are reporting overall. So these are very large numbers of people, so if we're thinking 40 per cent in Victoria, you
 5 know, that's 400 out of that 1,000 saying that their service is much worse than other people.

People being afraid of you. You know, so we all know the tropes around angry Aboriginal man and angry black woman, those sorts of things. So we are wide
 10 and alive to this day. 42 per cent of people are reporting that that's happened to them. Being yelled at, insulted, called, you know, a lot of those names that we don't like. Again, 35 per cent of people are reporting that. So these are not trivial things that are going on.

One of my personal favourites, if I can be a little bit facetious, being watched
 15 more closely than others at work or school, you know, because apparently we are incapable of performing our duties at work or, you know, in the school environment. It's 30 per cent of people. So I just want to highlight some of these, the prevalence of these things, whether it's Victoria, whether it's WA - it's higher
 20 in some places than others.

And then the one which we know has significant impact and we have alluded to it a couple of times, police unfairly bothering or intimidating me. 25 per cent of all
 25 Aboriginal and Torres Strait Islander people in the Mayi Kuwayu Study said that police - they'd had that engagement with police. One quarter. When we go down and look at, well, who is being unfairly bothered by police or interacting with them, young men. People in the Northern Territory, there's things going on at the moment. So 70 per cent of young men are reporting across the country this interaction with police.
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And we know that some of those interactions can get quite dangerous. So I guess I'm just impressing upon you the seriousness of some of these interactions, and while they are interpersonal racism, they're not structural. Therefore, my
 35 estimation is that these are underreported.

COMMISSIONER HUNTER: Yes, I would agree there's under reporting. And the outcome on a person would be if they were - what would the outcome for somebody - say, an Aboriginal young man who has had all of these, what would
 40 the outcome for him -

PROFESSOR RAYMOND LOVETT: I can't talk to necessarily - I would need to pull that apart separately for Aboriginal young men.

COMMISSIONER HUNTER: Well, just in general on an Aboriginal person.
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PROFESSOR RAYMOND LOVETT: In general, yes. So what we see with this is significant increases across what we call the social determinants. So lack of

5 opportunity in terms of finances, employment, those sorts of things. So engagement in that economy declines by over 50 per cent. That contributes to unemployment, poverty. If we look at clinical outcomes, so high blood pressure, a 50 per cent increase in reporting high blood pressure, for example. If we look at cultural wellbeing, which we've also analysed in this sample, it increases people's sense of isolation, disconnection, the very things racism is designed to do, by over 100 per cent.

10 **COMMISSIONER HUNTER:** Investment in rejuvenation of culture, not just an add-on of cultural activities?

15 **PROFESSOR RAYMOND LOVETT:** That's right. Yes. If we are trying to reverse or buffer against these things, we have to say - you would be able to say now that cultural engagement, participation, revitalisation remains as a key element to buffering against what's currently going on for people, clearly. But, again, if we're wanting to create equity, we need to boost investment in these things that are protective. While eliminating the other things, right. We need to do both. It's not all on Aboriginal and Torres Strait Islander people to fix this. In fact, it's not your job to fix it. Our job is to advise you how to fix it, and the State's responsibility is to resource it because we know what has happened in the past around resourcing for Aboriginal communities and families, or a lack thereof.

20 **COMMISSIONER LOVETT:** I just want to reiterate a point that you made earlier but just more broadly around our people's level of engagement but also seen as professionals and so forth. And, you know, you have come before us today - and rightfully so - incredibly articulate and across, you know, your research and the point that I'm trying to emphasise here is that this is not your gut feel. This is research and evidence. So for people particularly listening in, I think it's a really important point to make that this is backed up by facts and research.

30 **PROFESSOR RAYMOND LOVETT:** Yes. Well, you know, we keep emphasising, you know, my expertise as an epidemiologist. I just also happen to be an Aboriginal person that thinks from this perspective, which is good research practice, actually, if we really think about what research needs. We've done the hard work. We've done the development work over four to five years with community all over the country and, as a result, the engagement of - you know, these are large numbers of people. We're not talking about small effects. We're talking about very large effects of exposure to racism and settler colonial risk. The data reflect that.

40 But I will know commentary will come that I'm biased, you know, because you can't be an insider doing insider research, apparently. You have to have an external non-Indigenous anthropologist telling you.

45 **MS MCLEOD SC:** What's your answer to that?

PROFESSOR RAYMOND LOVETT: Run the analysis that I run, the way I run it and see if you get a different result. The data's available. As a scientist, you know, I'm obligated to make a data available for analysis. I will not make it public because this is the stories of over 10,000 Aboriginal and Torres Strait Islander
 5 people that have entrusted this data to me, and there's a process to go through if you want to analyse the Mayi Kuwayu data, but it's open for anyone to put forward an application to analyse any of the data.

MS MCLEOD SC: You've mentioned two features that were important in terms
 10 of progress towards health equity. One is the investment in protective systems, and the other is elimination of the - what I might call the adverse features including racism. So what are the features of an anti-racism system or a pathway towards health equity?

PROFESSOR RAYMOND LOVETT: So anti-racism frameworks are really
 15 important for systems, I believe. There has been very limited work done on that as well. We recommend using systems dynamics. It's a particular field of science that looks at systems and how they manifest and how they reinforce each other to undertake mapping exercises to see how systems reinforce racist behaviour but
 20 also where you can break systems to stop that.

And then you can develop maps and diagrams that show if you intervene in certain
 25 points of the cycle of the system where those points of inflection might be. And then you create loops that are reinforcing that keep the system operating.

So I'm familiar with some in the health systems, because that's where I primarily
 work. But when you're looking at features - so you need to conduct the mapping
 of the system to identify what's currently going on, where those points of
 30 inflection are. You need to then design an ideal system. So the accountability mechanisms are a very important part of that. So where a clinician, for example, has enacted racism in their clinical service delivery, who do they report to? At the moment - or who reports them? At the moment, it might be another health professional or the client. Where do those people report to if they want to make
 a complaint about their treatment? It is often into this system that is designed to
 35 protect the system itself, not necessarily the client. So there has to be independent mechanisms for investigations, that are external to the entity being investigated.

In terms of health systems but more broadly other systems, we're talking about
 40 there's client satisfaction surveys and staff surveys that go on in very large health systems every year. Embedding questions on racist experiences of health care, for example, is a really good start for your client satisfaction surveys so that you're getting information about where things are occurring, that they can be anonymous for clients, and so you can pinpoint either areas of concern or areas for action and investigation.

45 So I'm not aware of any system in Australia that has that. We've been recommending that that whole investigation process and accountability process sit

within, say, critical incident areas, because that's what they are and that's how they ultimately manifest, usually in the death of a client. And so what we need to do is make sure that those systems are independent and robust, and have a high level of Indigenous engagement.

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If they don't, then, you know, the system is designed to protect itself, as I keep saying, so it will keep protecting itself. I think that's where we can start with health systems. It's nice - nice that racism is being acknowledged as a contributor to poor outcomes. As a colleague of mine says, they should also be enacting other recommendations of investigations. So, sure, we can make apologies. How about we just get down to embedding what the recommendations from coronial inquests and other things say systems that have to do as well. We can apologise but we need do as well.

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15 **MS MCLEOD SC:** You have mentioned the need for the research or the data, and the identification of where experiences of racism are and where they're occurring. Do we need to also anticipate that the system will protect itself?

PROFESSOR RAYMOND LOVETT: Yes, absolutely.

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MS MCLEOD SC: How do we do that work?

PROFESSOR RAYMOND LOVETT: Yes, so one of the things that, in the health system, is also very important is if you're a health practitioner, you have a piece of legislation that you have to abide by. You have a regulatory framework for your profession. Every year, you usually pay a registration fee for that. And, you know, as has happened in one instance that I'm aware of, being deregistered as a profession has a profound impact. So if we are going to get -

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30 **MS MCLEOD SC:** Sorry, is that deregistration of a clinician or an institution?

PROFESSOR RAYMOND LOVETT: Yes, a clinician. Also losing your accreditation that all health systems are bound by can have a profound impact on that health system. I think if we are going to talk about serious doing, then these are the types of things we have to be talking about. The Australian Health Practitioner Regulatory Authority is already making moves in this space, that if you're not providing culturally competent care, there can be actions against you for not providing that care. The same moves are also occurring in the health system more broadly around accreditation. There are requirements of hospitals and health services, for example, that require them to be culturally competent and to be meeting certain obligations under their obligations to Aboriginal and Torres Strait Islander care processes.

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MS MCLEOD SC: Are the colleges moving with these programs too?

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PROFESSOR RAYMOND LOVETT: Well, I mean, the colleges, some are, some aren't. But, again, these - some of the colleges are advocacy groups as well,

and again, designed to - you know, will protect themselves. So, you know, it's a bit like asking, you know, the perpetrator to design the solution, if we're going to get serious about it.

5 **MS MCLEOD SC:** Do the Commissioners have further questions?

COMMISSIONER HUNTER: No, but I just want to thank you a lot. I think you've put a lot in perspective and a lot to think about and probably rethinking about some evidence we've heard in a different light, I would say. So I just really
10 want to thank you, one, for coming along and sharing this with us, but also a bit of an educational piece, I think, for people listening, or will get people to listen back. So thank you for all the work you do.

PROFESSOR RAYMOND LOVETT: Thanks for - you know, often we publish
15 - you know, in a university you are expected to publish papers, and apparently that's how we impact change. I want to thank you for the opportunity to speak to the work that we do, because I think the work that you're doing and the evidence, hopefully, that I have given goes some way to impact change, yes.

20 **COMMISSIONER LOVETT:** You talked a little bit about this. I wanted to open it up. What does self-determination look like in the health system context?

PROFESSOR RAYMOND LOVETT: I think if I was to think about
25 self-determination, but if I had the ability to design or make decisions about how a health service operated, you know, I would think about, sure, we need to receive that really good clinical care, you know, which is evidence-based at the same level as anyone else. But I would also want to feel that I could be, you know, who I am as a person in that environment in that process. So if we're designing a system that's truly self-determining, it's about the very essence of who you are as a person
30 or a people and how you see yourself in that system.

And, unfortunately, for many of us, in these - whether we're engaged, or work at a university or in a health service, it is sometimes very hard for us to see ourselves and how we want to be in this world in those places at that time. Now, that
35 acknowledges that, over history, that has been much harder for people. Maybe a little bit different today, but there are still these very real challenges that we face. So I guess, for me, that's what that would be.

40 **COMMISSIONER LOVETT:** And around accountability, so we have heard a lot about lack of accountability. I talked about it a little earlier. Can you share any further thoughts you had on system accountability?

PROFESSOR RAYMOND LOVETT: Well, I mean, the accreditation standards
45 are a really good accountability mechanism. Now, again, they have been designed in a certain way so we would need to pull that apart a little bit more and it goes back to my point before about, you know, what self-determination for an Aboriginal person in those system looks like. And I think we need to start from

there. And then once we figure out what those things look like in a system, we embed them in the accreditation standards.

5 So whether that's for Aboriginal people, whether that's for other groups as well, we need to make sure that how we are - want to or how we want to be in that system is reflected in the system itself. And if that's not being met - of course, you have to have the resources to do that within a system but then if it's not being met, how do you hold that system to account?

10 Now, if it's - you know, there are scales of accountability, right, from, okay, there was an obvious oversight or some issue that wasn't enacted, through to a terrible outcome, and everything in between. So there has to be responses that are commensurate with those differing levels.

15 **COMMISSIONER LOVETT:** Yeah. And I ask in the context of we are making recommendations back to government but also the First Peoples' Assembly to negotiate through Treaty, so just thinking about that systematic accountability.

20 **PROFESSOR RAYMOND LOVETT:** Yes. Well, there has to be - we see it with Closing the Gap at the moment around Joint Council, around endorsing Closing the Gap. I - there is still the situation where governments feel they need to manage our affairs. I see it. I can't talk to the evidence of it. Well, I can, actually. We do ask a question around, you know, government involvement in community affairs. I don't have that at hand but it's reported quite commonly in
25 Mayi Kuwayu.

30 So while we - and I'm talking to three Aboriginal Commissioners, so while we might be at the top in terms of that ultimate authority, there is still a non-Indigenous managerialism under us, and it concerns me. I'm becoming more concerned about that. So instead of non-Indigenous people being the arbiters of our decision-making processes, being at that top level, there is now another perverse way this is occurring through professional management of us, managing up. And I am very deeply concerned about this going on.

35 So, you know, that's just a personal reflection, but I think that's a serious issue that settler colonial ways morph very subtly and so we might be sitting at the table, there's things going on below us that are continually trying to keep us in check, and I think we need to really keep an eye on that as well.

40 **COMMISSIONER LOVETT:** This question is about your journey, and you would have heard - you've talked a lot about the data around the systemic racism and the work that you're doing. If you feel comfortable, would you share some of the - I guess, the barriers that you have had to push through on your professional journey with us? Only if you feel comfortable.

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PROFESSOR RAYMOND LOVETT: Yes, some of it not so comfortable. Some comfortable. I guess the - well, the tyranny of low expectation at school

was ever-present. You know, being naughty - not so naughty child but naughty. Those sorts of things. The university system has been interesting, shall we say, as one of the ultimate settler colonial institutions that is still alive, thriving and kicking today. I get the sense, which is why I highlighted, that I was watched
5 more closely than others that work.

I've got four degrees to compensate for an internalised lack of something which is perpetuated on me but also, you know, for that broader society expectation of low achievement. You know, I spent 12 years at university trying to combat
10 something that is not real, but that's a personal reflection more than anything.

I'm a product of settler colonialism. Like, you know, grandmother, Stolen Generation, Cootamundra Girls Home in New South Wales. Very fortunate that she was able to reconnect with family. She's no longer with us, but - sorry - she is
15 the person that I look to the most in terms of what I do every day. There's a photo I have sitting on my desk of her and my oldest brother, who was also removed, as the thing that keeps - you know, really sick way - my fire alight and why I do the work I do. So, you know, these systems have tried, have failed in terms of my own personal experience, but I am acutely aware every day that we've got an
20 absolute long way to go. And I hope to be part of it for a lot longer.

COMMISSIONER LOVETT: The last question was - and you just talked about it - what inspires you for the future?

25 **PROFESSOR RAYMOND LOVETT:** My 15-year-old son. You know, some of the experiences I've talked to today, he's already witnessed, unfortunately and, you know, I want to see a future for him where he's free to be who he wants to be, to be proud of where he comes from, proud of his heritage, free to practise his culture unencumbered, and that the rest of society values that. You know, that
30 might be a pipe dream but, you know, I'd love to have that for him.

COMMISSIONER HUNTER: Can I just say on that, that point, that most of the parents that have sat over there that are Aboriginal and Torres Strait Islander have said a very similar thing, and I think it's really important that we acknowledge we
35 do, as Aboriginal people, to better the next generation, so they don't have to. And your work just points to that, of what we need to do, what we need to do differently. Thank you for sharing that too.

CHAIR: Thank you. Thank you so much and, from my perspective, when you
40 are talking about who you are, just then, and your dedication to your grandmother, it's very strong for me.

PROFESSOR RAYMOND LOVETT: Yep. She was a fighter. In some small way, I hope to emulate a tiny fraction of what she did. Yes.
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CHAIR: Thank you very much. That reminds me that I was remiss, if you have finished, Counsel, not to acknowledge the absence of Commissioner North today

because he is ill. I just want to put that on the record. It wasn't in my script so I've remembered.

MS MCLEOD SC: And Commissioner Walter too.

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CHAIR: Commissioner Walter, I gave my apology for her for the week yesterday.

MS MCLEOD SC: Thank you, Ray, and thank you for the wisdom and personal insight that you have brought as well. Commission, is that an appropriate time for a break of approximately 15 minutes while we set up for the next panel.

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CHAIR: Very well. We will adjourn - gosh it's almost time again, yes, we will adjourn until the next session, which, say, 15 minutes, 11.30 should we say.

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MS MCLEOD SC: 11.30. Is that all right?

CHAIR: Yes, just to be realistic, thank you.

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<THE WITNESS WITHDREW

<THE HEARING ADJOURNED AT 11.11 AM

<THE HEARING RESUMED AT 11.31 AM

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CHAIR: If I can also, just in welcoming the Co-Chairs, I just need to reiterate that we are missing Commissioner Walter and Commissioner Hunter. Both are not well.

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MR MCAVOY SC: Commissioner Walter and Commissioner North.

CHAIR: Commissioner North. Sorry, Sue-Anne, how did I do that? So, Commissioners Walter and North are absent due to illness.

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MR MCAVOY SC: Thank you, Chair. I might announce my appearance. My name is McAvoy. I appear as Co-Senior Counsel Assisting the Commission for the purpose of these witnesses. We also have at the bar table Ms Narayan on behalf of the First Peoples' Assembly of Victoria and it might be appropriate that she announce her appearance as well.

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MS NARAYAN: If it pleases the Commission, Ms Narayan, appearing for the First Peoples' Assembly of Victoria.

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MR MCAVOY SC: Thank you, Chair. As you are aware, Chair, the witnesses this morning are on behalf of the First Peoples' Assembly of Victoria, are the Co-Chairs, Ngarra Murray and Rueben Berg. I propose to have them sworn in at this time. I can indicate that we intend to break at 1 pm, and I would ask the

Commissioners to consider a 30-minute break in an attempt to finish at or about 2.30 this afternoon as scheduled, and we will deal with that at the appropriate time, Chair, if that's suitable.

5 **CHAIR:** Thank you.

MR MCAVOY SC: The other matter I might indicate is that Mr Berg has some opening remarks that he wishes to make, once we have proceeded with the swearing in process, which I will proceed to now. Ngarra, could you tell the
10 Commissioners your full name, please.

MS NGARRA MURRAY: Yeah, it's Ngarra Murray.

MR MCAVOY SC: In the evidence that you are about to give to the
15 Commission, do you undertake to tell the truth?

MS NGARRA MURRAY: Yes.

MR MCAVOY SC: I will turn to Rueben. Rueben, could you tell the
20 Commission your full name, please.

MR RUEBEN BERG: Rueben James Hamilton Berg.

MR MCAVOY SC: In the evidence that you are about to give to this
25 Commission of Inquiry, do you undertake to tell the truth?

MR RUEBEN BERG: I do.

MR MCAVOY SC: Thank you. Commissioners, there are two submissions
30 from the First Peoples' Assembly of Victoria which will be tendered in due course. The first submission relates to education, health and housing, and the second in relation to economic independence. I will now invite Mr Berg to make his opening comments.

MR RUEBEN BERG: (Speaks Gunditjmara language) I began then by
35 acknowledging the Traditional Owners of Country that we meet on here, the Wurundjeri people, and I pay my respects to their Elders past and present. Like many Traditional Owners across this magnificent place, today known as Victoria, the Wurundjeri have done an amazing job of keeping the flame of their traditions,
40 knowledge language and wisdom burning. Despite some pretty overwhelming and harrowing odds, these treasures have been preserved and will continue to be handed down to future generations. And thanks to this, it also means that everyone who now calls Victoria home or even visitors passing by can learn about and connect with the oldest living cultures in the world. I hope everyone can
45 recognise what a gift that is.

Now, the topics of this hearing, health, education, housing and economic life, are, of course, incredibly important and all things that I know Treaty can help with. In a fair society, everyone should get a chance to get a good education, have somewhere to live and be able to provide for their families.

5

But since invasion and colonisation, so many laws and policies have sought to actively exclude Aboriginal people from benefitting and getting ahead. We were driven from our lands, forbidden from using our languages and burdened with economic disadvantages and obstacles that are still weighing us down today. The good news is we know that when we make sure Aboriginal people have the opportunity to make the decisions about our lives on our own terms, our communities thrive and everyone benefits.

10

And that's what Treaty is about. We know that when it comes to things like Aboriginal communities, Aboriginal languages, our sacred sites and land, Aboriginal cultures, that, of course, the experts are Aboriginal people. Community knows community. We don't have to look far further than the fantastic work of the Aboriginal community-controlled sector to see that. The many ACCOs serving our communities in health, education and housing have a proud history of delivering excellent services and better results because they are run by and for our communities. They understand, respect and tailor to our cultures and communities.

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Heading into Treaty negotiations with the Victorian government in a few months' time, I know a key point we'll be hammering home is decisions about First Peoples should be made by First Peoples. We say this because it's the right approach on principle. Nothing about us without us. But we also say it because we know from experience that it delivers better results.

25

It's for these reasons we have created a Treaty negotiation framework that will directly empower Aboriginal communities with the ability and tools to develop and deliver practical solutions at a local level. In contrast to the policies of yesterday that sought to exclude us from the economic benefits generated in Victoria, Treaty will empower our communities to create wealth and prosperity for generations to come.

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Shared resources like the Self-Determination Fund that the Assembly negotiated with the Victorian Government to create will help in that process, and you will have seen it as one of the topics of the Assembly's submission to this hearing. I will be happy to answer any questions you might have from me on that and other topics today. I will just wrap up by reminding the wider audience outside of this room, given it's Reconciliation Week, that First Peoples do want to get on with creating a better future together with everyone who calls Victoria home. But to do that we have to do this work, like Treaty, like truth-telling, to level the playing field so that we can do so as equals.

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Our people have faced unfair barriers for too long. In economic life, in health, in housing and in education. So let's keep having the important conversations like this one and commit to doing things better. Thank you.

5 **MR MCAVOY SC:** Thank you, Rueben. Are you happy for me to call you Rueben?

MR RUEBEN BERG: Absolutely.

10 **MR MCAVOY SC:** And Ngarra?

MS NGARRA MURRAY: Mmm.

15 **MR MCAVOY SC:** As was said in the outset, there are written submissions that have been provided to this Commission with respect to education, health and housing and also with respect to economic life. I will take you to those submissions in due course, but I would like to try and put the submissions in some context in terms of the role that the First Peoples' Assembly has in those areas.

20 Firstly, can you just remind the Commissioners - and I know it's been done before - remind the Commissioners of the membership of the First Peoples' Assembly?

25 **MR RUEBEN BERG:** Yes, so the Assembly currently has 32 members and looking to add when it's provided to us, the 33rd member of the Assembly, and we are democratically elected members from this state. There's a process whereby we can have members elected within different regions, and there's also a process whereby recognised Traditional Owner groups - whether that's recognised by the State or recognised by our own self-determined process - that those recognised groups can appoint their own representatives as well, and that brings us to the 33
30 members of the First Peoples' Assembly of Victoria.

MR MCAVOY SC: Thank you. Now, the mandate or the function of the First Peoples' Assembly of Victoria, can you just describe that for the Commissioners, please?
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MR RUEBEN BERG: Absolutely. So in this second term of the Assembly, we see it is now our role and it is our role to progress Treaty negotiations with the State for state-wide Treaty outcomes. That is the role of the First Peoples' Assembly of Victoria.
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MR MCAVOY SC: And it's obvious that First Peoples' Assembly of Victoria is a relatively new institution within the Victorian First Peoples' communities?

45 **MR RUEBEN BERG:** That's correct. So we were first established in 2019.

MR MCAVOY SC: And in respect of these topics that the Commissioners are looking at now, health, housing, education, there is a considerable wealth of

knowledge and experience within the Aboriginal community organisations who have been operating in these fields for decades. Would you agree with that?

MR RUEBEN BERG: Absolutely.

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MR MCAVOY SC: And, indeed, in your opening remarks, you made comment about that wealth of knowledge and experience. Many of those Aboriginal Community Controlled Organisations have or will give evidence in this hearing block on their specialist subjects. Given that they are making submissions themselves and giving evidence, I'm just wondering if you could give the Commissioners some guidance as to how the Assembly's submissions ought to be viewed in light of that specialist advice.

10

MR RUEBEN BERG: Yes, I think from an Assembly perspective, our focus, as is our role, is to understand how a lot of the recommendations that will come from Yoorrook which are going to be fed by the expertise of our community experts and by community themselves directly, how that fits into the broader Treaty landscape and the broader Treaty picture, but I think it's critical to recognise that the 33 members of the Assembly that sit around the chamber, we don't say that we are there as the experts on any particular field. We are there to represent our communities and to progress Treaty outcomes, and we are going to need to draw from and work in partnership with all of our experts, whether that's with Traditional Owner groups, whether that's with ACCOs, whether that's with other community organisations and individuals, we need to draw from the wealth of expertise from our communities, so we get the best outcome.

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MR MCAVOY SC: Having asked that question and heard your answer, that's not to say the members of the Assembly are not members of their own communities and bring with them their lifetime of knowledge and experience to assist the Assembly to form its own views?

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MR RUEBEN BERG: Absolutely. I think one of the roles of the Assembly is to look at the big picture of everything that we're hearing from all the different expertise and draw from our own individual experiences to work out what the best path is, drawing from all that expertise that comes from the various areas.

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MR MCAVOY SC: But it is the case, I think, from hearing both evidence from the Aboriginal Community Controlled Organisations and from the government, that there is some intention to attempt to deal in some additional sense or greater depth in some of these issues or all of them, in the Treaty context. Is that your understanding?

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MR RUEBEN BERG: Yes. So as we progress, the idea, from our perspective, around Treaties is not to just have one single Treaty at a state-wide level; it's to have ongoing progressive Treaties, and the current focus is what kind of that systemic issue - how do we change the entire system and create a new system and then continue to add to the Treaty conversations on particular subject areas, we

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will, of course, be leaning heavily on the expertise about those areas from our community.

5 **MR MCAVOY SC:** Thank you. Now, I want to turn to that part of your first submission that deals with education. I ask the operator to bring up page 17 of that submission. Do you have your submission in front of you?

MR RUEBEN BERG: I do.

10 **MR MCAVOY SC:** Can you see the portion of your submission which reads:

"Colonisation has had and continues to have..."

Are you able to read that into the record please.

15

MR RUEBEN BERG: The first paragraph or both?

MR MCAVOY SC: Both, thanks.

20 **MR RUEBEN BERG:** No worries:

"Colonisation has had and continues to have a significant impact on First Peoples' education. Until recently, education was used as a tool for forced assimilation and cultural genocide. Children were forcibly removed from their homes, and despite the promise of education, were often trained in farm work or domestic service and used as a source of cheap labour amongst other abusive practices. The Bringing Them Home Report 1997 provides further invaluable insights into the struggles thousands of First Peoples faced during and since forced removals were mandated. The transmission and preservation of First Peoples' cultures, languages and practices was actively discouraged and punished. The impacts of these colonial practices continue to be felt today and there remains persist disparities, with respect to educational access, retention and achievement."

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35 **MR MCAVOY SC:** Thank you. Now, this Commission has heard evidence from witnesses that they, or their parents, who have lived, particularly, on Aboriginal reserves were only permitted to attend school to grade 3 or 4. They never passed primary school. Are you aware of those racially discriminatory practices.

40 **MR RUEBEN BERG:** I am.

MR MCAVOY SC: And are you aware yourself of individuals or communities that have had that form of discriminatory practice exercised upon them?

45 **MR RUEBEN BERG:** Mmm.

MR MCAVOY SC: Do you wish to say something, Ngarra?

MS NGARRA MURRAY: Yes I have a story of my grandmother Nora that went to school at Cummeragunja. She was only able to pursue her education to grade 3 on the mission. And she just really loved learning and really wanted to be
 5 educated but, unfortunately, she had to finish her education in grade 3. Then she tried to go to the Barmah school which was across the river in Victoria. And they lined up all the black kids and they lifted up their shirts to check the colour of their skin on their backs. And she was too black to go to Barmah public school. So she unfortunately, from there, ended her educational journey and then went into, you
 10 know, domestic duties as a child and eventually would be part of the Cummeragunja Walk Off.

But I often think of that story of my Nan, and I've told my own daughter, who is in grade 3 now, that story and she gets really, you know, sad and can't believe that
 15 would actually happen to some of the age of eight or nine years old. So those are real stories that we have and are very familiar, probably, across all our families of our grandparents, that grew up on the mission and went to school.

So that was a huge disruption to her education and she ended up a lifelong journey
 20 of educating herself, pretty much, but, yeah, I think back to that little girl on the Cummera mission and many other kids too that she grew up with and that are still alive today that were, you know, finishing up their education at primary school age.

MR MCAVOY SC: I want to ask you a question about your observations or
 25 knowledge about your communities. Does that discriminatory practice against allowing Aboriginal people to engage in the fullness of the education system, has that had any effect on the way communities might view the western education system now?
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MR RUEBEN BERG: I think 100 per cent it does, and I think it's not something
 35 that the broader community has a chance to really reflect on and understand, because I think for a lot of the broader community when they think about schooling they will look at a school and think, yeah, that's a place you want to be part of. That's a place where their parents, their grandparents went to school, where there's lots of other kids who are just like them, where there's the teachers who are just like them. School just seems like a comfortable place that you would want to send your family when you are looking at it from a non-Aboriginal perspective.
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And I think there needs to be that understanding that when you look at it from the
 45 Aboriginal community's perspective, those perceptions are often vastly different. When you're thinking about a place where there's very few of your community there, very few teachers absolutely and the curriculum isn't reflecting your history properly, that you have got family history of places that they were deliberately excluded from, just the - how our communities perceive education and schools themselves is vastly different and those perceptions have an impact on how you go

about living your daily life. That if you don't grow up where it's just assumed that you will go to school and you are going to feel welcome and safe, that has a significant impact on education outcomes today.

5 **MR MCAVOY SC:** One other of a number of impacts that are reported from community members is, and is often repeated within community, is that in many cases, First Peoples are the most well-trained people in the country because of all the courses that First Peoples do, but that they don't result in any employment, and so the value of education is viewed as perhaps less than it might be for the broader
10 community. Is that part of your experience?

MR RUEBEN BERG: Absolutely. Actually I used to work for the Department of Employment and Workplace Relations and there were programs set up to ensure that you could get First Peoples through training, and a lot of times, it was
15 sadly just seen as a way for organisations to just get some quick cash in the door by running some First Peoples through training, and then we would see the same people go to another organisation for a different set of training and it was just a constant cycle of being put through training but no actual jobs at the end of it. That can be very disheartening to think you've gone to all this effort to do this
20 training and then you are just told to go off and do another set of training. That can have a significant impact.

MR MCAVOY SC: So you are saying people ask themselves, well, what's the value of going through all the training and education if there's no work?
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MR RUEBEN BERG: Absolutely.

MR MCAVOY SC: And the lack of - the failure to obtain work, what are the causes of that, to your mind, having worked in that industry or government sector?
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MR RUEBEN BERG: There's no simple one answer for this, and I think there's lots of other expertise around it, but I think there is still that - there is still that direct racism about employment outcomes for First Peoples, but there's also just that indirect racism or that unconscious bias that if someone has sitting in front of
35 them for a job interview someone who they can relate to as - if they are a non-Aboriginal person doing the interview, they have got someone sitting there they can relate to, they understand, they have similar shared experiences, and they have another option of an Aboriginal person who they might not have the same shared understanding of, they might have preconceived biases about this
40 Aboriginal person, they're more likely to pick the non-Aboriginal person as the person they employ, and that's just the sad reality of the things we still see happening today.

MR MCAVOY SC: One other aspect I just want to explore with you briefly is the value that appears to be placed upon Aboriginal knowledge and experience in the mainstream educational institutions, and we will hear evidence about this from
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other witnesses later. But is there any comment you can make about how that impacts on people's desire to go through western education systems?

5 **MR RUEBEN BERG:** Yeah, I think it is improving. There's still a lot of work to be done, but if you think about for generations of our community, they've been going to school and if there was anything they were taught about Aboriginal people, it was just negative stuff, that we were worthless, kind of - that was the sort of narrative that we were being taught at school. There's a shift happening and it needs to be happening more to get better education across the sector, across
10 community, to understand and draw from that Aboriginal knowledge with appropriate respect and recognition of that.

But it has been an ongoing issue for a long time, that education system hasn't provided a positive outlook on First Peoples. It is changing and there is positive
15 work happening, but there is still a lot that needs to be done.

MR MCAVOY SC: Following on from the section of your submissions I took you to earlier, there's a further heading Education and Treaty, and I might just read to you some of the submission and then ask you some questions. It reads:

20 *"ACCOs have and continue to play an important role..."*

And ACCO is, of course, Aboriginal Community Controlled Organisations:

25 *"...have and continue to play an important role in providing culturally appropriate and responsive education services to First Peoples in Victoria. Despite ACCOs often achieving better outcomes in education than mainstream services, they do not operate on equal footing with mainstream organisations and remain severely under-resourced. The lack of investment in ACCOs to deliver stronger
30 educational outcomes for First Peoples is exacerbated by an education system that is based on a colonial education system.*

*Despite the Victorian Government's commitment to self-determination, it is not doing enough to ensure First Peoples in Victoria receive culturally appropriate
35 and safe education. Systemic change to the education system is required to ensure that it is available, accessible and appropriate for all First Peoples. Treaty is required to give effect to genuine self-determination and address the current injustices in the education system. First Peoples need to be afforded the opportunity to decolonise, redesign and reclaim an education system that has
40 historically been used as against them as a tool of assimilation and oppression."*

Those words speak of substantial change to the education system. That's what's intended, I'm sure?

45 **MR RUEBEN BERG:** Correct.

MR MCAVOY SC: And a big part of that substantial change, I would suggest to you, is the issue of cultural safety in schools. Is there any further detail you might want to share with the Commissioners about your view of the need for cultural safety in schools for students?

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MR RUEBEN BERG: Nothing too more detailed to add, just that it's obviously so critical that Aboriginal kids can feel safe and comfortable at schools. And I mentioned before that the perceptions for the broader community is there is that level of comfort to know you are sending your child to a school with other children who are similar to them, with teachers who are similar to them, who understand how they go about living their lives. But when you're coming from a different culture as the First Peoples, there's not that automatic understanding, there's not that shared sense of connection to other students and that shared respect and understanding of your culture.

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I think there's still a lack of understanding of what our cultures are and there's still this stigma that hangs over First Peoples that we need to continue to work to eliminate that. And so that's why changes like that are so critical.

MR MCAVOY SC: Do you have anything to add, Ngarra?

MS NGARRA MURRAY: Yeah, maybe just an example of a good little school out in Thornbury. Thornbury Primary School has a big population of Aboriginal kids, and they all learn Wurundjeri Woi Wurrung language, and it benefits the whole school. So all the kids learn it. And it's really built unity and strength and an identity for the school. And culture is really embedded in that school, and it's quite a small school, but I feel that everyone benefits from the learning of the Wurundjeri Woi Wurrung language, and it's spoken by the teachers, all the kids. They sing in language in songs and it's a holistic approach to the cultural journey that all kids have at that little primary school.

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So I think - I just wanted to share that example of what they're doing out there in the northern suburbs where we do have a high population of kids in the primary school, and it's a real cohesive, collective unity that they have built throughout the school. They even wear their Aboriginal NAIDOC shirts as their uniform. So it's like a real proper school where culture is key to kind of their learning and their foundation.

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MR MCAVOY SC: I can tell by the way in which you've spoken about it that you feel that it's a good program and a good school. Is that type of cultural safety, the embracing of cultural safety in that way something that should only be done at schools with high population of Aboriginal kids? Or is it something that ought to be available to kids across Victoria?

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MS NGARRA MURRAY: I think it should be available to all kids across Victoria, and it's a really unique example. There's not many schools that are

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actually like that in Melbourne, but I feel that that should be embedded across the curriculum right across the state.

5 **MR MCAVOY SC:** And there's benefit to the school and the other students from their knowledge and -

10 **MS NGARRA MURRAY:** Absolutely, and to the families that have their children at the school, it's been amazing to see. I've been part of that school through my own children over, you know, many years and have seen that school flourish in that sense around the cultural learnings that the children undertake in their everyday engagement with the school.

15 **MR MCAVOY SC:** Now, that's - you've spoken just now about the circumstances where there is a culturally safe environment for students. Is there, to your knowledge, any connection between a lack of cultural safety and poor outcomes such as low attendance rates and poor academic outcomes?

20 **MR RUEBEN BERG:** I don't have any specific studies or statistics to refer to, but it would seem obvious to me that if children don't feel culturally safe at school, they're much less likely to be attending as much as they should be, and they are much less likely to have that desire to succeed at school if it's a place where they are not feeling culturally safe. I think anyone who can think about - can put themselves in the position of a young Aboriginal child in that position would recognise that that's going to be a challenging environment.

25 **MR MCAVOY SC:** So we've heard from Ngarra just a moment ago about the steps that were taken at Thornbury Public School. Are there things that you are able to talk about here today that might ensure students in the formal educational setting get appropriate cultural safety or is that something that really is a more detailed discussion?

MR RUEBEN BERG: Yeah, I think that's a more detailed discussion.

35 **COMMISSIONER HUNTER:** Are you aware that the Child Safe Standards, the very first Child Safe Standard of this state is that relevant entities establish a culturally safe environment, diverse and unique identities and experiences of Aboriginal children and young people are respected and valued. Do you think that's upheld in this state as in schools as the first principle for standards for our kids?

40 **MR RUEBEN BERG:** No, I don't think so.

COMMISSIONER HUNTER: Okay. Sorry, Mr McAvoy, I just wanted to bring that into the conversation.

45 **MR MCAVOY SC:** Now, you are aware that in Victoria there is the Marrung Aboriginal Education Plan which is adopted in 2016 and has a 10-year life span

running until 2026. And so many of the issues that I'm now taking you to are dealt with within that framework. Is that correct?

MR RUEBEN BERG: Correct.

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MR MCAVOY SC: But I suppose there is opportunity for us today, without going into the detail of the Marrung plan, to note that there are a range of other - what we might call intersectional issues that add to the problem that's caused by a lack of cultural safety, including, generally speaking, health, mental health, poverty, housing, which all contribute to poor academic outcomes. You would agree with that?

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MR RUEBEN BERG: Absolutely. And that's what I think is the challenge within this space and why I think, despite often times good intentions from the government, there isn't the capacity to get the outcomes because you can't just focus on one particular area. There needs to be that tackled across all those areas, and I think too often what we are seeing is that we are trying to solve the issue from kind of within the sandbox, within the structure, within the framework that already exists rather than stepping back and saying, well, actually if we are going to kind of reset this, how would you do it without being constrained by that existing sandbox? And I think that's the opportunity that Treaty provides us.

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MR MCAVOY SC: Yes. So notwithstanding the work that has already been done, and the adoption of the Marrung plan, you include some statistics at page 18 of the - page 18 of your written submissions about educational outcomes continuing to be comparatively worse for First Peoples despite some improvement in some areas. So, in that part of your submission, you note that First Peoples' children were 1.45 times more likely to experience bullying than they were a year ago. That 34.2 per cent of First Peoples children commencing school were assessed as being developmentally on track compared with 57.7 per cent of non-Indigenous children. They are stark figures and those figures are - they come from the Victorian Aboriginal Affairs Report, the annual report for 2022. That's correct?

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MR RUEBEN BERG: Correct.

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MR MCAVOY SC: 76.6 per cent of First Peoples aged between 20 and 24 had attained a year 12 or equivalent qualification, compared with 91.1 per cent of non-Indigenous people in the same age group. 47 per cent of First Peoples aged 25 to 34 years had completed non-school qualifications of Certificate III or above compared to 75.9 per cent of non-Indigenous people in the same age group. 58 per cent of First Peoples aged 15 to 24 years were fully engaged in employment, education or training, compared to 79.9 per cent of non-Indigenous people in the same age group.

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When the disparity exists in engagement and employment at such a wide level, that flows through to all of the other issues that we've spoken about. Would you agree with that?

5 **MR RUEBEN BERG:** Yes, absolutely.

MR MCAVOY SC: And the final figure that you've cited in your submission is that the number of education workers who identify as Aboriginal has fallen from 247 to 209 between 2021 and 2022. These figures are drawn from the Victorian
10 Aboriginal Affairs Report, and they are figures that exist notwithstanding that we are in the second iteration of the Closing the Gap process and education outcomes has been a target since the commencement of the Closing the Gap process.

15 So the fact that there hasn't been the ability to bring about parity in many of these areas, does that raise concerns for the Assembly?

MR RUEBEN BERG: It does, absolutely. And I think there's a strange paradox within all of that, though, because obviously, you know, from any community
20 perspective, I would hope, we want to see these discrepancies addressed as soon as possible. But I think we need to be mindful that it's been generations and generations and generations of barriers and exclusion, deliberate exclusion by government that has led to these discrepancies.

25 So it would be kind of naive to think those discrepancies would be addressed overnight. That doesn't mean we shouldn't be doing significant work to get those outcomes, but if you look at the early childhood numbers where we have seen good increases in that space, that's really positive, but the long-term impacts of that are going to be generations away, because that means that right now there's
30 more kids going to primary school and early years education, which means in 10 years, there's going to be more kids which finish schools, which means in another 20 years after that, there's going to be more kids going to school whose parents finished school, and it would be become a more ingrained thing, we have gone to school and finished and we are more likely to do.

35 But that's generational change that we are talking about. So sometimes I'm concerned that because we have these targets, that if government's seeing things aren't quite working - often there has been good direction about what should be put in place, but if government is too short-sighted on when it thinks the outcomes should be achieved, they are more likely to dismiss programs because overnight
40 we haven't seen a difference. And we want to make sure we have got a longer-term vision about what we're going to do and that we are tackling it at a system-wide level so we can actually see those benefits across generations.

45 And obviously we want the outcomes as quickly as possible, but I think there needs to be some realism about it's taken generations to cause these concerns; it might take a little while to address them and we need to be entrusted to be able to go down that path.

MR MCAVOY SC: How do you balance that with the impatience in the community for change?

5 **MR RUEBEN BERG:** Yeah, that's a challenge. And so we need to be putting in whatever initiatives we can to try and address that, but we also need to be realistic and pragmatic about how quickly we are going to see those things because we all recognise that these discrepancies aren't because of one particular thing. If it was, I feel confident we would have gone and fixed that one particular thing. It's
10 because it's a multitude of factors that all compound themselves, that's what makes this so challenging. And so we need to be realistic about the types of things we are going to need to do to change it and continue every day to strive to make that little bit more extra difference, and that will compound to greater outcomes as well.

15 **MR MCAVOY SC:** No doubt many of the discrepancies that continue to exist in social outcomes for First Peoples have been historically embedded, and the challenge is to break away from the history of the issues, and the interaction. But the evidence that this Commission will be hearing over the next couple of weeks
20 speaks to differential treatment for First Peoples in Victoria that appears very strongly and is acknowledged by the government to be a symptom of racial discrimination, and that's a matter that you've pointed to in your submissions.

25 Is it the Assembly's view or perhaps your own personal view that racism continues to play a central role in the differential outcomes for First Peoples in Victoria?

MR RUEBEN BERG: It definitely does, but I'm always mindful, when we have these sorts of conversations, that we distinguish between the various shades of racism that do exist, because I still fear that sometimes within the broader
30 community, when we say that racism is a factor, they only go to the extremes. They only think this is because someone clearly says, "I don't like Aboriginal people so I'm not going to give you an education". And that still does occur, sadly, but that is not the majority of what our concern is.

35 It's those smaller elements of racism, it's that unconscious bias, it's that paternalism, that thinking that we are going to try and protect Aboriginal people from themselves because we know best. It's those types of things that have the greater impact and are more widespread. And I do often fear that if we only kind of paint it as that extreme version of racism, some people will dismiss this because
40 they think that's such a minor thing. So I'm always very wary that we understand that full scope of what we mean by that racism, that unconscious bias as part of that, so that we can really unpack it and see the full extent of it, rather just giving the opportunity for people to dismiss it because I think it's just a far-right extremist idea.

45 **MR MCAVOY SC:** The reality is, though, that there - I would suggest to you, is that there remains a degree of a structural and institutional racism that permits

decisions to be made by government which has a discriminatory effect, even though, in some cases, the decision-maker might not even be aware of that discriminatory effect.

5 **MR RUEBEN BERG:** 100 per cent correct, yes.

MR MCAVOY SC: And so that speaks to the need to provide some deep education to the decision-makers in particular about what structural racism is and how they might avoid bringing biases into the decision-making processes.

10

MR RUEBEN BERG: That's definitely one solution. The other solution is that they no longer be the decision-makers.

15 **MR MCAVOY SC:** But in broad areas such as education and health and housing, do you accept that there's always going to be some overlap between the service to the community in such a way that there needs to be continued to be service delivery by the government?

20 **MR RUEBEN BERG:** It will always be a role for government to play. Government can't wipe its hands of its responsibilities, absolutely. But it's wherever possible making sure that where there are decisions that need to be made directly about First Peoples, that we empower First Peoples to be the decision-makers in that space. That's a much better solution than training up other people to understand First Peoples. First Peoples know about First Peoples already.

25

MR MCAVOY SC: And I won't argue with you on that point, but I just want - I wonder whether the First Peoples' Assembly has, as part of its mandate, advocacy against racism. Is that part of the Assembly's role?

30

MR RUEBEN BERG: Absolutely. Definitely we see that as part of our role.

MR MCAVOY SC: And are you aware of whether there are any coordinated government programs to reduce racism against First Peoples?

35

MR RUEBEN BERG: I'm aware more broadly of programs to address racism as a broader concept, and I think there does need to be more targeted focus specifically on First Peoples. I think there has been a recognition that the broader multicultural and other minority groups discussion is an important one, that there are different and distinct interests of First Peoples within that space that do need to be recognised.

40

MR MCAVOY SC: So what you are pointing to there is a distinction between racism in its general sense, more generalised form, as opposed to the peculiar type of colonial racism against people who have been dispossessed and remain dispossessed?

45

MR RUEBEN BERG: Correct. Correct.

MR MCAVOY SC: We know from the evidence that has come before the Commission that there is work that goes into cultural awareness and cultural competency programs for government officers and trainings made available. We know that the government has adopted self-determination for First Peoples as a key government policy and has been in place for almost 10 years now. And the existence of those programs and policy environments in themselves require people to become a bit more educated and have a deeper understanding of Aboriginal matters and Aboriginal people. Would you accept that proposition?

MR RUEBEN BERG: I would, yes.

MR MCAVOY SC: Do you think that the government is still going through a learning curve in that regard?

MR RUEBEN BERG: Absolutely. There is still a learning curve. And I think part of the actual power of Yoorrook is being able to provide a more solid basis to actually build on that learning curve and add to that learning for both the State and the broader community. That - I think oftentimes, there was some uncertainty about exactly what the bedrock of truth was about what's to our peoples, and the fact we have this process where we have been able to bring out Ministers to actually give the evidence, that can be really powerful because sometimes it feels like we can say it as First Peoples until we are blue in the face and it's not really heard, but the fact that we can actually now point to evidence of Ministers stepping up and saying these things will be a very powerful tool to ensure that parts of government have that better young.

MR MCAVOY SC: And it's the case, as with most matters, that some agencies perform better than others? This Commission heard evidence, I think, from the Chief Commissioner of Police to the effect that some small fraction - perhaps 16 per cent of the force - had taken up the option of cultural awareness training over a program that had been running for a number of years, and that doesn't speak to a high level of interest in attaining that particular type of knowledge; whereas there are other agencies with much better record. Does that equate with your experience?

MR RUEBEN BERG: Yes, I absolutely agree that there are some areas where there has been better success than others, but across the board, there's still more work to be done.

MR MCAVOY SC: So who should lead that work do you think?

MR RUEBEN BERG: I think the government needs to take a leadership role in saying, "This is not just something we want to do to tick a box. This is actually a critical thing to be doing." And I think it's the role of something like the Assembly to continue to advocate that and to continue to push and test and see

5 how the government is actually performing against those things. Because I know a lot of the policies and strategies that you would have seen as part of this process often indicate there's a need for cultural awareness, that training, but it oftentimes isn't delivering at the rate it should be. So that's a role I think that we can play in having that accountability for government on those things.

10 **MR MCAVOY SC:** At page 19 of your submission, you make certain observations in relation to the Victorian Government's 2017 Racism in Victoria report. It was noted in the keys finding of that report, you set out in your submissions:

"Racism is damaging to both the mental and physical health of Victorians."

15 That applies more so to First Peoples, after centuries of differentiation and oppression. Would you agree with that proposition?

MR RUEBEN BERG: I would.

20 **MR MCAVOY SC:** Aboriginal Victorians and Victorians who speak a language other than English at home but are not of the northern European or northern American origin are most likely to experience racism. That's a proposition that you would agree with, or a finding?

25 **MR RUEBEN BERG:** I would.

MR MCAVOY SC: As socio-economic status declines, experience of racism increases. That's a finding consistent with your own observations?

30 **MR RUEBEN BERG:** Yes.

MR MCAVOY SC: The less - what it is, in effect, saying is that the less powerful you are, the more likely you are to be the subject of racial discrimination. You agree with that?

35 **MR RUEBEN BERG:** I would agree with that.

MR MCAVOY SC: Another finding is that:

40 *"Victorian adults who frequently experience racism are almost five times more likely than those who do not experience racism to have poor mental health."*

45 So the connection between mental health and experiences of racism is strong, according to the findings of this report. Is that something that accords with your own observations of the community?

MR RUEBEN BERG: It does. And, again, I think it's very important to distinguish the different levels and the grades of racism that, when we talk about

these sorts of statistic, it's not necessarily someone coming up to someone and saying "I hate you because you are Aboriginal", Like, that level of overt racism that does still happen. It's those small little things that people are doing as a result of recognising your Aboriginality. Those sort of things that add up.

5

And I think it's also - it's really important to get that recognition that it's the spectre of racism that when we as First Peoples walk down the street, we can't necessarily tell which of the people are actually racist. Sometimes you can, but you don't always. And there's always that fear that the person you might be talking to in the shop, they could be a racist person as well. So you are always having to be often quite guarded because you are not sure which type of person you might be talking to.

10

So even if you happen in your day to meet all the people who happen not to be racist, the very fact that there's that constant fear that we might have to deal with yet another racist person, and there's that sense of always checking am I having to deal with another racist. Even if you don't come across a racist for that day, it still has impact on you, and that's a really powerful element to be better understood, I think.

20

MR MCAVOY SC: Do you think that that trait of being on guard against the pain of discriminatory conduct from somebody is something that we - that might be inadvertently passed on to our children or purposely taught to children in order to help them manage their own existence?

25

MR RUEBEN BERG: Absolutely.

MR MCAVOY SC: So that the consequence is that young people and children having to be taught how to manage their own cultural safety?

30

MR RUEBEN BERG: Yep.

MR MCAVOY SC: It's - you would agree that that's a fairly - a very sad state of affairs, isn't it?

35

MR RUEBEN BERG: I would indeed, yep.

MS NGARRA MURRAY: It is, and I think it's because racism is rife in our lives. Like, it's in all aspects of our lives, whether it's in the health system or our Mob going to apply for housing or in the schools. It's in our everyday interactions. And I myself as a parent try to arm and skill up and get my children ready. Like, I worry about my son catching the train at times in the public transport system because of the way that he could be treated or targeted on his way home from work or wherever. So it is taxing on our health in all ways, and it's something that we deal with as Aboriginal people right across the country. That's how I feel about it.

45

MR MCAVOY SC: Is it - this is a broader question. You may or may not be able to answer it. But is it possible to reach a place where First Peoples in Victoria are safe and thriving without dealing with the racism issue?

5 **MR RUEBEN BERG:** That's what we are striving for. I think that's the goal. How obtainable that is in a short-term or a long-term, I'm not sure, but I don't want to get up in the morning if I have to concede that that's not a possibility.

10 **MR MCAVOY SC:** So you're saying that, in your view, a state of affairs where the First Peoples of Victoria are thriving and are culturally strong is possible? Do you say that it's possible notwithstanding racial discrimination or racism? Or do you say that there has to be more done to combat racism in order for those outcomes to be achieved?

15 **MR RUEBEN BERG:** It's not going to happen by itself. It's going to take a lot of work, and, hopefully, the work is - the burden of that work is carried by the broader community, the Victorian government takes on the burden of that work, that it's not left, as it so often is, to First Peoples to carry that burden. But absolutely, that's what my aspiration - when I think about what Treaty can achieve
20 and what I'm striving for is that our communities are thriving and that our culture is at the heart of our daily lives. And that's what we will continue to push for, and we know it's not going to be a straightforward simple path. But we make to make sure that we have that goal we are working towards and try and bring as many people as possible to carry the burden to help us get there.

25 **MR MCAVOY SC:** I understand that your answer has, in effect, responded to this, but in order to begin thriving and for culture to be at the heart of what you do, you can't be worried about the racist responses of people around you. You can't permanently be on guard. The two things are incompatible, aren't they?

30 **MR RUEBEN BERG:** Yes. You are not thriving when you are having to be worried about those things, senses of racism, on a daily basis.

35 **MR MCAVOY SC:** So there's a commitment to self-determination from the Victorian government and there's a lot of things happening. Then there is the report from - the 2017 report on racism in Victoria. Then there's the Marrung Aboriginal Education Plan which talks about cultural safety and cultural learning. And then there's the Victorian Aboriginal Affairs Framework and then a range of
40 other programs and policies. But the question, I suppose, is whether those programs and policies have been enough to change the lives of First Peoples and deliver the education - an education that is equitable, responsible and culturally appropriate.

45 You have - in your submissions, you have spoken to that particular question. You say that Treaty offers a pathway for First Peoples and Victorian government to work together and make this systemic reform that is needed to holistically address the socioeconomic issues facing First Peoples. So that in your, or the Assembly's

view of the trajectory for First Peoples of Victoria, a Treaty has the capacity to do those things that perhaps haven't been able to be achieved to date?

MR RUEBEN BERG: Correct.

5

MR MCAVOY SC: And what is it that you say Treaty brings that all of that action that's currently in place and has gone before or has failed to adequately deliver upon?

10 **MR RUEBEN BERG:** I think, at its heart, it comes to that concept I was speaking about before whereby a lot of times, within these conversations at the moment, it's all set with the framework of existing sandpit of how things operate, and we are trying to create a new way of looking at things that's not confined by that existing sandpit. And part of that, I think, stems from the fact that when we
15 think about self-determination, what it actually means, empowering First Peoples to make decisions about things, the way government is currently structured, it doesn't really - it's really limiting in how much it can enable that, because government has obligations at a higher level to be responsible for the decisions that it makes.

20

It is ultimately accountable for the decisions it makes. So it really struggles with transferring that decision-making power whilst keeping its obligations, whilst it's managing risk. So the government is often concerned, I think, or in saying, if we transfer those decision-making powers but the government is still holding on to
25 that risk, it does need to keep its tentacles hooked in there. We see Treaty to create a new space where the government can confidently transfer decision-making powers and the risk so it can step back.

30

And the government is not structured at the moment to be able to do that. And that is what keep holding us back, is those little tendrils that keep digging into the work we're trying to do. By through Treaty establishing a different way of doing business, that the government at the highest level can say, yes, we can actually transfer this decision-making power across and trust that it's going to happen, that the process itself means that First Peoples are now responsible for it and the risk
35 now sits with us. And that's a big burden to take on as First Peoples, but if we want the responsibility we need to be prepared to take on that risk, and once we can establish that process, a mechanism by which government can truly transfer decision-making powers, then the rest will flow from there.

40

But until we have that structure, that capability to actually move away from the way government currently operates and empower us to truly make our own decisions, we are still going to be stuck in that old sandbox. So this is what we are trying to do through Treaty, is create the space so government can transfer the decision-making power and we can actually improve people's lives through that.

45

MR MCAVOY SC: At the outset of your evidence today, the depth of specialist knowledge and experience held within the Aboriginal Community Controlled

Organisations was acknowledged, and the history of those organisations is well-known, and they are - they will be witnesses at this hearing block. Do you say that those organisations and the communities are ready to take on that responsibility and risk?

5

MR RUEBEN BERG: I think there's a distinction in my mind between setting up the structures that enable to take on those powers and responsibilities and there's a separate process for saying we are now wanting to take over those power and responsibilities. So that's something we will have to discuss and have lengthy discussions about and understand when is the right time to do that. But unless we actually have a structure capable of doing that, there's no point in talking about how we're going to do it.

10

So they're not necessarily phased at the same time. And this is the conversation we need to have through this Treaty process, is how do we identify the types of powers that we want to see held by First Peoples and it's a separate conversation about when will those powers are transferred to First Peoples and in what capacity. So that's where we will need to have those ongoing discussions.

15

MR MCAVOY SC: Some of the witnesses that have come before the Commission have spoken about their individual First Nation holding the decision-making power and taking responsibility for their own communities. Is it the role of the Assembly to help those Nations and groups of people become Treaty-ready and then implementation performance ready?

20

MR RUEBEN BERG: Absolutely. And, to be clear, I was talking about the state-wide outcomes when I spoke about the role of the Assembly. For particular Traditional Owner groups, we hope that the work that we are doing sets a kind of model, a precedent about how, at a local level, for Traditional Owner groups, a similar process would be enacted where there's a similar power to do that, and there will be significant support for groups to progress through that.

25

Through this whole process, we are always very mindful of making sure we don't set ourselves up to fail. We need to make sure we are going to succeed in this space and by transferring power and responsibilities to groups that aren't ready to exercise it, that will lead to not achieving outcomes, so we're very mindful of that.

30

MR MCAVOY SC: In your submissions, there's a case study in relation to Northland Secondary College. The issues relating to the closure of Northland Secondary College are perhaps well-known to members of the First Peoples communities in Victoria. The case study speaks for itself, and the Commissioners have been able to read that. But are there lessons that come from that case study that you think maybe could be pointed out to the Commissioners and those listening?

35

MS NGARRA MURRAY: Yeah, I think it's an incredible story of the fight to save Northland, and we have had a Member articulate the stories, so truth-telling

about education injustice and the closure in Northland in 1992. We also have a student here today that was part of that fight, along with many other people like Uncle Gary Foley and Uncle Robbie Thorpe, I think Aunty Deidre Baksh, Alister and Lyn Thorpe, Uncle Alan Brown, Aunty Rieo, Uncle Archie and Aunty Ruby,
 5 all those parents with kids at the school were part of that fight under the, you know, Kennett government closing down the school.

And it was a really exemplary model of Aboriginal education and having a population of Aboriginal kids there, which then went to the rebel school, which
 10 is talked to in another story but, yeah, I definitely think there was unique Aboriginal program that was part of the school with the dedicated Aboriginal educators they had, so it was a really successful model. And the way it was closed down - because it was a Koori school and known as a Koori school across the state and then reopened in '95, and that was after a battle with the government and
 15 multiple court judgments, but there's a lot we can learn around that model and having culturally embedded, you know, knowledges and practices within the school.

And there would be many more people that could talk to that story. And there's
 20 also a documentary film, a play that you can learn more about that fight. So that was just one example of, you know, public schools being closed down in the 90s. So, yeah, I think it's over 30 years ago now that that happened. And a lot of those kids have grown up. Maybe some didn't make it either on the way. But I think Lisa Thorpe Jr is here. She was part of that cohort of kids that came out of that
 25 school.

CHAIR: Could I ask a question here. I would like to ask both of you, in the context of now and then, because you are both parents with kids at school, but on
 30 page 20 of your submission, you point out about Marrung being - you know, expecting that we need to have appropriate accountability mechanisms now, and that - the ability to have an education system that's trustworthy and culturally appropriate is implied there. But there's also an implication that there's not much been delivered there to this point in the overall context.

How do you relate to a system that's so - you know, across the state, how do you
 35 deal with that frustration, that racism and your concern, Ngarra, you were talking about worrying about a child just getting to school, let alone, once we get there, for a safe cultural safety space that we're hoping will arise out of a good educational policy with the right ingredients and hopefully the involvement of our
 40 people from the outset.

I mean, there's a bit of a disconnect in my mind about how that's all going to come
 45 out because of the time factor in relation to Treaty space. So are there other structures that exist in education that can underpin at this point in time and help enable those policies to be upgraded, modernised in the context of where we are now? I know it's a big question, but it's a serious question because we know

government is a big machine. Departments are huge in comparison to the resources we have.

MS NGARRA MURRAY: Yeah, I think there's a lot of frustrations and challenges, but I know the Assembly, we really join in that long advocacy of our community-controlled orgs around the specific reforms that's need. So there are urgent reforms that are needed now, but it's so massive. Like, we are unravelling a complex system. You know, programs and policies that have been imposed on us, and I think it is a matter of urgency for our kids and for the cultural safety of our children within the system, and there's urgent reforms, obviously, that you will probably hear from the education experts within this hearing.

But I think that, yeah, there's a lot of work for us still to do and things that we can do now and we have talked about in the interim, short-term and long-term, but it will take time. As I said, it is rife within the system, the cultural exclusion that our children face within, you know, primary, secondary, even tertiary. Is there anything you wanted to add, Rueben?

MR RUEBEN BERG: I just say that we've seen again and again that there are strategies that have been put in place across lots of different sectors, including Marrung here for education. And they are strong strategies in most cases that have been developed with support from First Peoples as part of that. That doesn't mean that he cannot be strengthened, and hopefully in the future they are strengthened as well. But if government has these strategies already, whilst Treaty is going to be a mechanism in the future to, as a broad concept, hold government accountable, it shouldn't take Treaty for government to actually deliver on promises and strategies it already has. Government should be able to have a process to deliver on its actual strategies without the need for Treaty, and they should be delivering on these strategies. Treaty is just a mechanism to continue to hold them to account in the further, but that shouldn't prevent them from right now actually delivering on strategies that they have already committed to.

CHAIR: It shouldn't, but I notice that the date of the report about racism, 2017, before the pandemic, before First Peoples' Assembly, these things, I mean, we have moved apace in some, you know, attitudinal change, I think, in part but will the department or the government be able to do that across the board? I mean that's the big challenge, isn't it? And is the Assembly - how is the Assembly going to manage that? Is there a tiered approach from, say, Members who are engaged in education and training? Is there some possibility of changes in that space so that they are lifted up to meet the new era, if we can put it that way?

MR RUEBEN BERG: Yeah, I think we are open to looking into those sorts of options, but I look forward to when members of the Education Department come before yourselves to hear what they've got to say as well.

45

CHAIR: That's to come yet. Thank you.

COMMISSIONER LOVETT: Just in relation to the Northland Secondary College case study, is there any further insight you would like to share on the detrimental impact, on the trauma that would have caused those children, young people, given it was a secondary college, and the ongoing impacts that that may have had on their lives?

MS NGARRA MURRAY: Yeah. I don't want to speak on behalf of the Northland collective but, yeah, it impacted a generation, and that's quite evident within the story that they tell around the fight and the movement, around even just the government cost-cutting measures, lack of recognition for cultural responsive education, the community and legal mobilisation that had to happen within the fight, and, you know, looking at educational autonomy and Indigenous rights within the education landscape.

So I think that there was a lot within that fight. I would have loved to see some of the representation of that group appear within the hearing to tell that story but there is, as I said, a film and a play and book to come around that story.

COMMISSIONER LOVETT: You mentioned earlier about some of the people who didn't make it. My brother was one of them. There was a case study referred to yesterday from Aunty Jill Gallagher about Lawrence Lovett. And he is one of those former students that went to Northland Secondary College who didn't make it. So, you know, it's really important that people understand that it impacts us all, no matter where we sit and where we're sitting or where we are advocating from and so forth.

So I just, you know, as we always say on this Commission, and we reiterate, particularly to government and bureaucrats that these aren't numbers. These are our people's lives. Continually, we're hearing of deep traumatic stories and our peoples' lived experience as well. So I just wanted to, yes, thank you for that.

And also the Self-Determination Reform Framework of government, I love this document. I think I refer to it every time. But the key enablers are prioritise culture, address trauma and support healing. Address racism from a cultural safety and then ultimately transfer power and resources to communities, which is - this is government language. Can you share any insights around where government has done that in an educational setting? Beyond the school, which is great, and I want to give the shout out that you did to Thornbury. It's great work that they're doing there. But where has that happened to date in Victoria?

MR RUEBEN BERG: Not my area of expertise across that, and I would hope that you ask those questions to the other - the experts, and I'd be very interested to hear the answer because my worry is that the answer is often "not enough".

COMMISSIONER LOVETT: I think the reason why I asked that - and it's good to hear your response to that, because as we've heard many a times, generally the answer has been "no". And if it was, we would all know about it. If there was

true self-determination happening in our communities and in our societies, we would all know about it because it's a rarity. Thank you.

5 **MR MCAVOY SC:** Commissioners, are there any other questions in relation to the education topic you might have?

CHAIR: Not at the moment.

10 **MR MCAVOY SC:** Well, I might just ask a couple of questions which I had proposed to ask a little later, but they follow on from the questions from the Chair, I think. We heard evidence yesterday from the Co-Chairs of Ngaweeyan Maar-oo. As you know, that is the body tasked with the role of representing the various community organisations whose areas of operation are touched on by the National Agreement on Closing the Gap. It was their - the Co-Chairs' evidence, that the
15 government appeared to be waiting for Treaty in terms of doing many of the things that could be done in a variety of areas that the Closing the Gap targets and the priority reforms touch upon.

20 And it was their evidence that the government could not wait for Treaty and must get on with the delivery of their existing commitments, their Closing the Gap obligations. I take it from your answer to the Chair that you agree with that view?

MR RUEBEN BERG: Definitely.

25 **MR MCAVOY SC:** Is there observation about government seemingly deferring the implementation of matters or development of new responses to the Treaty process something that you are aware of? Or is it something that is consistent with what you understand to be occurring?

30 **MR RUEBEN BERG:** We consistently flag with the various levels of government that we have conversations with, that it's not our expectation that the government holds off on critical things, critical things connected to Closing the Gap, critical things connected to a variety of different areas, that they should not be deferring to Treaty as a way of delaying on those things. There are some
35 elements where if they are talking about new systemic reform that needs to happen, that is obviously something that need to fall under the consideration of how Treaty can work, but there are no limits of the number of things the government could already be doing and should be doing, particularly around Closing the Gap. There are clearly identified targets and actions within that, but
40 there's no reason why Treaty should be something that's delaying any of those activities and it wouldn't be something the Assembly would wish to have delayed in any way, shape or form.

45 **MR MCAVOY SC:** Is it your experience that Treaty is being used as an excuse in some circumstances for delay?

MR RUEBEN BERG: We do, when we talk to members of our community, we often hear them saying, "We've had conversations with government and we're told that because of Treaty these certain initiatives can't progress". And whenever we hear that, we have communications with people that we talk to on a regular basis
5 and say that's not our expectation of how things should be done.

MR MCAVOY SC: Much of the time in the evidence yesterday with the co-chairs and the CEO of Ngaweeyan Maar-oo was spent talking about the difficulty of deep structural and cultural change in government and what steps
10 might be taken to achieve that. You've talked about the way in which government might divest itself of responsibility and risk as one mechanism. Are there other ways that come to mind in which, that are not already being done which might help to expedite or perhaps embed the necessary cultural and structural change that's needed in government to ensure that matters are dealt with in a timely
15 fashion, that they are dealt with in a culturally sensitive fashion in that way that respects First Peoples?

MR RUEBEN BERG: Yeah, absolutely. So when we were speaking earlier about the idea of - the decision-making powers transferred, there's only going to be particular scope whereby it is the decision-making powers that are directly
20 transferred. There's going to be a whole raft of areas where, for various reasons, the government will still be a decision-maker, whether that's a sole decision-maker or a joint decision-maker, the government won't be absolved of all its responsibilities. And so we are mindful that as we move towards this space that
25 there's clear mechanisms that are needed for holding government accountable for actually the delivery of their responsibilities, and a formal mechanism to also be able to provide direct advice to government about how we think First Peoples' views and matters should be considered in how they conduct that business they're still responsible for. And that's a key function we see as we move into that Treaty
30 landscape.

MR MCAVOY SC: Thank you. Any questions on that response, Commissioners? No. I might then turn to your submissions, the Assembly's submissions, in relation to health. Just so that the Commissioners are aware, do
35 either of you have a background in the health sector? No. That was my understanding. So your observations here come from your involvement in community matters, your roles at the various positions you've held and your current roles as co-chairs as well as just your life experience.

40 In the submission at page 28, you make the observation that:

"Health outcomes continue to be comparatively worse for First Peoples..."

Comparatively worse for First Peoples:

45

"...despite improvements in some areas."

Does that cause you - that must cause you great concern.

MR RUEBEN BERG: Absolutely.

5 **MR MCAVOY SC:** Notwithstanding all of the attention that is being paid to the improvement of First Peoples' health in this state and across the country, with the Close the Gap strategies, the various strategies that are being undertaken and the various subsectors of the health environment, that still, in some areas, the outcomes are getting worse.

10

MR RUEBEN BERG: And even more troubling to think about that we don't have a control to compare to, that without those initiatives it's very likely things would be even far worse, if that's even imaginable.

15 **MR MCAVOY SC:** One of those - you list out a number of examples. The first dot point is that:

20 *"First Peoples have a life expectancy approximately 10 years lower than non-Indigenous Australians. Nationally, Aboriginal and Torres Strait Islander males born in 2015 to 2017 are expected to live 71.6 years and females to 75.6, non-Indigenous males and females to 80.2 and 83.4 years respectively."*

So we are talking about substantial differences in life expectancy for First Peoples in Victoria still?

25

MR RUEBEN BERG: Correct.

MR MCAVOY SC:

30 *"Chronic disease is responsible for 64 per cent of the disease burden of Aboriginal Australians with presentations to Victorian hospital emergency departments by Aboriginal people double the rate for non-Aboriginal people."*

35 **MR RUEBEN BERG:** Correct.

MR MCAVOY SC: We will hear evidence about some of the reasons why that rate may be as high as it is, and in part I think some of the evidence will go to a reluctance of First Peoples to go to seek early treatment resulting in emergency presentations rather than earlier treatment. Is that your understanding of one of the drivers of that high number?

40

45 **MR RUEBEN BERG:** There are many, but absolutely that's one of those. And it stems back to this is a recurring theme across all these areas, is those perceptions of those institutions. That when you have got institutions like hospitals that were involved in the Stolen Generations, that where there's a concern that if you come there with children who aren't well that there's a risk that you might lose your children because of that; when there's perceptions of hospitals being unsafe places,

of unhealthy places - you know, when there's ongoing recurring sense that hospitals are just sick places where you go to die that perpetuates itself because community becomes too concerned to go there because of that fear that it's a sick place, that if you go there, you will end up dying, that you don't go and you stay
 5 away and you become so sick. And then when you do end up having to go to hospital it becomes a self-fulfilling prophecy and that then just perpetuates. So those perceptions, that are very different from the perceptions that might be had by the broader non-Aboriginal community, again have a significant impact in these areas, alongside a multitude of other factors.

10 **MR MCAVOY SC:** One of the factors that we heard evidence about in this Commission during the Child Protection hearings was the growing prevalence of use of pre-born or pre-birth orders for removal of children and the fact that they might be carried out at hospitals after, in the postnatal period after birth. Are they
 15 the types of actions that you were just referring to which would dissuade people from going to hospitals and doctors?

MR RUEBEN BERG: And similar stories across generations, across decades.

20 **MR MCAVOY SC:** The evidence of witnesses about those particular orders indicate that it's not just historical but it's ongoing and there's present day concern.

MR RUEBEN BERG: Absolutely.

25 **MR MCAVOY SC:** The next dot point reveals that:

"Aboriginal people are 2.4 times more likely to have a disability than non-Aboriginal people."

30 The next:

"Aboriginal Victorians are approximately four times more likely to present at emergency departments for alcohol-related causes than non-Indigenous Victorians."

35 And we will hear from community organisations involved in the alcohol and substance abuse areas later in these hearings:

40 *"Rates of diabetes are three times higher in Aboriginal Victorians than non-Aboriginal Victorians. Aboriginal people are around three times more likely to experience high or very high levels of psychological distress than non-Aboriginal Victorians."*

And the perhaps related statistic that:

45 *"Self-harm emergency department admissions are four times the rate of non-Aboriginal Victorians."*

With respect to the last two dot points, it's understood that the evidence coming before the Commission may show that those mental health issues were hidden numbers in the past and have become more prevalent in recent years.

5

MR RUEBEN BERG: Mmm.

MR MCAVOY SC: The statistics, when read together, you would agree are alarming?

10

MR RUEBEN BERG: Absolutely.

MR MCAVOY SC: The inability to shift those figures speaks to deep structural problems in the health system. Would you agree with that assessment?

15

MR RUEBEN BERG: I believe so but not just within the health system because these are again all interrelated elements, and they all compound one another and they're - often a key factor among a lot of these statistic is socio-economic status. And so many of our community haven't had that chance to participate in the economy that leaves us in that lower socio-economic status, without the levels of education we've already discussed. All those factors compound themselves. And even if it's just like 1.1 per cent more - just 1.1 per cent more than the broader community in one area, if it's the same in every other single area that adds up and that compounds. And the reality is it's not 0.1 per cent more; it's much more in each of those areas. But I don't think there's enough broader understanding about the compounding effect of all those things. It's not one little thing impacting on First Peoples: it's a multitude of things that have impacted us across generations that lead to those compounding effects. And that's why it is a challenge to address these things because the expectation that would just impact on those compounding matters is - is naive to think we can just solve that. But that doesn't mean we stop trying and it doesn't mean we need urgent reform in these areas but we need to be realistic and trust - give the trust to First Peoples and the time and the capacity to address these in a way we think is going to be best.

20

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35

MR MCAVOY SC: Commissioners.

COMMISSIONER HUNTER: I'm glad you pointed that out, Rueben, because I was going to say, with the Treaty process and there's a lot that makes our people physically and spiritually sick and disconnects us from who we are, and that is all those systems. That's the education, health, the child protection system, Corrections, all of those. So if we are - and it may be a big question and you may not be - how will Treaties or Treaty - I know they are not negotiated, and without being presumptuous, how is that going to help our people get well?

40

45

MR RUEBEN BERG: And I think it's important to not see that Treaty is going to be the panacea that just solves everything magically. Treaty, I think, is going to enable us to have a powerful tool and powerful tools to actually leverage greater

control of these matters so that we can actually listen to our experts in the community and enact those things that our community experts are saying without needing the permission of government to enact those initiatives, and to determine other own processes of measuring success and have a much greater focus on preventive measures.

I think, sadly, what we have heard too often is that it's only once you are hanging off the edge of the cliff that you can get the treatment you need. We want to stop people getting close to the cliff in any way, shape or form. And by reframing how we want to do these things, with the control that Treaty will enable us to have as First People, that will lead to that success. But it won't happen overnight. None of this is going to happen overnight. But I will be much more confident on our journey when we have greater control over those things than I am at the moment.

MR MCAVOY SC: I'll just take you to page 30 of your submission, which follows on nicely from Commissioner Hunter's question. You make the observation that:

"State-wide Treaty has the potential..."

A word very - a very important word in this sentence, it:

"...has the potential to secure the structural reforms required to implement these policies, aspirations and goals, and Traditional Owner Treaties will give First Peoples the chance to guide the development of culturally suitable solutions within their own communities."

I think that's, in essence, what you are saying to the Commissioner to her question.

MR RUEBEN BERG: Correct.

MR MCAVOY SC: Commissioners, I note the time. It had been suggested at the commencement of the session that we might take a 30-minute break, if that's suitable to the Commissioners, and that way we should finish at the scheduled time of 2.30.

CHAIR: Okay. We will adjourn for 30 minutes and resume at 1.30. Thank you.

MR MCAVOY SC: Thank you.

<THE HEARING ADJOURNED AT 1.01 PM

<THE HEARING RESUMED AT 1.33 PM

CHAIR: Counsel, are we ready to resume?

MR MCAVOY SC: Yes.

CHAIR: This session, the Yoorrook Justice Commission Hearing Block 7 resumes.

5

MR MCAVOY SC: Thank you, Chair. Co-Chairs, before lunch I was asking you some questions about the way in which the state-wide Treaty and Traditional Owner Treaties might operate to meet some of the challenges we've been discussing. I'm not sure whether you can, but given that the State of Victoria, together with the health-related Aboriginal Community Controlled Organisations have committed to the Korin Korin Balit-Djak: Aboriginal health, wellbeing and safety strategic plan 2017 to 2027, I mean, that document's already there. Are there things that come to mind that might be able to be done in that same area in a Treaty that haven't been able to be already done in the strategic plan?

15

MR RUEBEN BERG: I think really, in answering that question, I will draw back from the review that was done by the Productivity Commission on to Closing the Gap and more broadly what it identified, is that, to get better progress in these areas, including in health, we need to make sure that there's greater accountability for government on actually delivering on its commitments, and we need greater levels of self-determination, of First Peoples actually be empowered to make decisions within these spaces. And that is a consistent theme across all the areas and something that we'll continue to reiterate as the Assembly because we see it as a critical role of Treaty to address that.

25

MR MCAVOY SC: Is it also the case that, from your previous answers, the Commissioners understand you say there needs to be greater coordination across the various sectors?

30

MR RUEBEN BERG: Yes, absolutely.

MR MCAVOY SC: That's something that the Productivity Commission report mentioned in terms of there not being sufficient whole-of-government approach to meeting the challenges of the Close the Gap targets.

35

MR RUEBEN BERG: Absolutely. They need to be seen as an interconnected series of targets, not as standalone targets.

MR MCAVOY SC: I just want to take you to the five urgent areas for action that you've identified in your written submissions. We have discussed at some length with respect to education the tackling racism, and much of what has already been said will apply equally to the health sector. Is there anything else that at this point you would wish to add that is specific to health in relation to racism?

45

MR RUEBEN BERG: Not specifically. I think a lot of what we're talking about in here is - covers off on that, and I just flag that conversation we had before around that racism, that those given degrees of racism need to be fully understood,

and oftentimes those racist attitudes - the things we perceive as racist attitudes, the perpetrators of that actually feel like they are acting in good faith and not even realising that they are demonstrating acts of racism, and that's a really important aspect that we need to continue to unpack.

5

MR MCAVOY SC: And you would accept that - and perhaps it was the Assembly's attention that this particular Commission of Inquiry play a role in helping to educate the broader community and do its part in avoiding the perpetuation of bias?

10

MR RUEBEN BERG: Absolutely. And it's really critical that Yoorrook is able to provide that resource for the broader community and to have that, as I said, that ground truth so that there's that reliable place that people who are interested in wanting to make a change in this space within themselves know there's something they can draw from to see what actually does need to happen.

15

MR MCAVOY SC: The second area for urgent action that is identified in your submissions is the support for Stolen Generations. Can you just expand on that a little bit for the Commissioners?

20

MR RUEBEN BERG: I don't have too much further that I would add in that space, but just to reiterate that this continues to be a concern for our communities and that was very clearly demonstrated, I think, through the strong community showing we had at the recent apology from the police in particular. And that was very powerful to have the Chief Commissioner recognising and acknowledging the role of police within the Stolen Generations, and that's something that I think would be positive to see across the board, to have that recognition from government of their role they played as one of the many ways of enabling us to move forward in that space.

25

30

MR MCAVOY SC: And so in the health area, the support for Stolen Generations would also include support for their children and grandchildren who may have suffered from intergenerational trauma as a result of their parents or grandparents' removal?

35

MR RUEBEN BERG: Absolutely.

MR MCAVOY SC: Is it also taking, in your understanding of the reference to the Stolen Generations, is it intended to take into account the current children who are presently in out of home care and have been removed from their families or is that a different subject?

40

MR RUEBEN BERG: I'd say I'm not in a position to comment on that distinction at this point, I'd say. I think it's - we need to be always wary, that we want to make sure, regardless of how we are describing things, that First Peoples' children need to have every opportunity to grow up with their families, just like every child should have the opportunity to grow up with their own families.

45

MR MCAVOY SC: We heard some evidence yesterday from the Co-Chairs of Ngaweeyan Maar-oo about the failings in respect of Elder care. That's another item which you've identified in your submissions as a matter for urgent action.
5 Can you just speak to that particular -

MR RUEBEN BERG: Yeah, it is it is really critical and something that touches all of us as First Peoples, and especially when you consider some of those health aspects of First Peoples' life expectancy being much shorter, that means that
10 there's less time for us to spend with our loved ones, our Elders, and ensuring that there is appropriate care for our Elders is absolutely critical.

MR MCAVOY SC: One of the issues that arose yesterday was the lack of community-operated facilities for Elders, aged care facilities. Is that something
15 that's of concern to the Assembly as well?

MR RUEBEN BERG: Definitely.

MR MCAVOY SC: The next issue which has been identified in your
20 submissions is social and emotional wellbeing. Can you just expand on that, please?

MR RUEBEN BERG: I think it's part of that broader reflection of health from a First Peoples' perspective and goes to the holistic nature not just when we talk
25 about all these different elements within the matters we have been discussing, but within that health area in particular, is that sometimes I think it can have too much of a narrow focus on, you know, your blood pressure as an example of indication of health. And I think as First Peoples, we look at it more to do with our connection to Country, more to do with our spirit and soul, that's something that
30 needs to be much better reflected and understood within how we go about addressing these matters.

MR MCAVOY SC: So in terms of urgent action, is there something in particular
35 that the Assembly has in mind that the government could do?

MR RUEBEN BERG: I think, as with most of these matters, we echo the calls from our experts in this space within the community-controlled sector and advocate that the things that they think are the best outcomes are what should be
40 happening.

MR MCAVOY SC: The fifth urgent matter is the support for First Peoples with disabilities. We have had a Royal Commission into Disability which had some focus on First Nations People with disabilities. Are there particular aspects that the Assembly says ought to be dealt with in this area as a matter of urgency?
45

MR RUEBEN BERG: Nothing more specifically than what's within our submission, but I just add in light of the previous conversations we have been

having that for First Peoples with a disability, this is just another really significant element of that compounding factor that is added to their load alongside being First Peoples.

5 **MR MCAVOY SC:** Commissioners, I propose to move on to housing and homelessness now, unless there are any questions you would like to ask before I change topics?

10 **COMMISSIONER HUNTER:** I think, just thinking about, over lunch, what you have said is, really, we have got the experts coming in. So don't take it as a sign that we are not listening or not asking, but we do take on board and really thinking about when those experts come, and what you have added to that conversation is actually helping us think about what that can possibly look like. So I just wanted to - if we are not asking, that's probably why.

15 **MR MCAVOY SC:** Thank you, Commissioner. I'll start by asking a broad, open question, because it may be the case that many in the broader community don't really have much visibility or knowledge about First Peoples' housing and homelessness issues. How big an issue or how significant an issue is housing and
20 homelessness for First Peoples?

MR RUEBEN BERG: It's a very significant issue. And we've got some statistics, obviously, outlined within the submission itself, but to me, at a fundamental level, it comes down to this concept about intergenerational wealth;
25 that if you - the reality is, if you look at First Peoples today and you consider the lives of their grandparents and their great-grandparents, there was no scope for our grandparents, our great grandparents as First Peoples, as Aboriginal people living on this place, it is inconceivable to think that they were owning their own homes in those times because of the systemic racism, the impacts of colonisation.

30 And that just leaves us so far behind the eight-ball when we come to the generations today. There's been basically zero capacity for that intergenerational wealth. And that leaves us today in the position where we are unable to access that home ownership in a time when it is harder than ever - it has been for
35 anybody. When you compound that, again the fact we don't have that intergenerational wealth, that means that area of housing and homelessness is of significant concern and often that leaves us, as First Peoples, having to be in inadequate housing, unsuitable housing, and that then leads to the compounding concerns around education, employment and health.

40 **MR MCAVOY SC:** I take it from your answer that you are identifying the transfer - the entry into the property market with the transfer of intergenerational wealth as a significant factor in people's wellbeing?

45 **MR RUEBEN BERG:** Definitely.

MR MCAVOY SC: And the inability to engage in that very basic fundamental level of economic advancement on a family unit level has been significant for First Peoples in Victoria?

5 **MR RUEBEN BERG:** Definitely.

MR MCAVOY SC: And so is it the case that you have available to you any materials that have - where there are studies or reports as to the difference between the outcomes for people who have access to intergenerational wealth through housing, or is that material not something that you know of presently?

10 **MR RUEBEN BERG:** Not specifically, but I think it's borne out, and when you look at the differences in outcomes in home ownership for First Peoples, it's - there's a clear and obvious link there to that intergenerational wealth.

15 **MR MCAVOY SC:** And that, in turn, is connected to the whole of the colonisation and dispossession process?

20 **MR RUEBEN BERG:** Absolutely. And I sometimes kind of liken it to a game of monopoly where the board was set up and we as First Peoples were living on these lands and sharing our lands and thriving on our lands, and then colonisation has occurred and we have been removed from being able to play on this monopoly board, and other people have come and taken it over and put on their hotels and their houses, and we have been left to then pick up the pieces afterwards and keep rolling the dice that has a landing on other people's hotels and having to pay. And, unfortunately, the reality is there's more go to jail spaces for our people as well, and all of these things compound to leave us in this position today.

25 **MR MCAVOY SC:** Thank you. At page 37 of the submissions, the Assembly makes the observation that secure housing is fundamental to safety, economic participation, psychological resilience and physical health. How - can you just explain what's meant by the connection between secure housing and psychological resilience?

30 **MR RUEBEN BERG:** I think a home is such a critical thing, especially for young people, that when you have that one space where you feel safe, where you feel happy, where you feel secure, that's fundamental. And when you don't have that secure home, when you are not sure whether you are going to have to move next week to somewhere else, where you are going to have to go and sleep on the floor of your cousin's house, when there's that uncertainty about that, when you don't have that centring of a home, that clearly has a fundamental impact on people's lives.

35 **MR MCAVOY SC:** You then go on to observe that:

40 *"Mana-na woorn-tyeen maar-takoort, the Victorian Aboriginal Housing and Homelessness Framework, states that, for First Peoples, a culturally enriched*

home supports mental and spiritual health and helps maintain a strong connection to their culture, providing strength and resilience at difficult times."

5 So that is consistent with your observations a moment ago about psychological resilience being one of the consequences of secure housing?

MR RUEBEN BERG: Correct.

10 **MR MCAVOY SC:** The Victorian Aboriginal Housing and Homelessness Framework, is that comparable in a broad sense with the Marrung Aboriginal framework?

MR RUEBEN BERG: In what way?

15 **MR MCAVOY SC:** Being a government-sector framework for delivery of better outcomes for First Peoples?

MR RUEBEN BERG: I believe so.

20 **MR MCAVOY SC:** It's addressing housing and homelessness, whereas Marrung is addressing the educational needs, and, again, further the Korin Korin Balit-Djak health strategy is another sector-wide strategy for improvement of outcomes for First Peoples. So we have these frameworks or strategic plans that have been
25 designed with the Aboriginal Community Controlled Organisations, and is it appropriate to - fair to assume that they represent at least the best attempts by the community and government to make substantial change in their respective sectors?

30 **MR RUEBEN BERG:** I'd say they represent a very strong attempt to address that within a limited scope. I almost kind of think of it as a thoroughbred horse but with blinkers on. It's through a very narrow focus and, as I said before, it's within the existing sandpit that it's trying to do that, but it hasn't got the scope to kind of step out of that and think, well, actually, are we going about this the wrong way from the beginning? So I think within that scope, it is endeavouring to do the
35 best that it can.

40 And, really, it's amazing that we have got so many of our First Peoples' experts stepping up to, despite what they have seen from government across the years, to think, actually, this is a chance to make a difference. So there are some positive things that come from it, but it's still limited in what it can achieve because of the structures we have got in place.

45 **MR MCAVOY SC:** As you've noted, there are some areas in which those plans and programs are achieving outcomes, beneficial outcomes.

MR RUEBEN BERG: Correct.

MR MCAVOY SC: But as we will hear from many of the witnesses over the coming weeks, in other areas within those same plans, the progress is slow and, in some parts, non-existent.

5 **MR RUEBEN BERG:** I think it would be really interesting and powerful and useful across this process, when talking both with the Aboriginal community-controlled experts and with the government, to be able to identify are there particular pinch points where there is decision-making that is preventing us from getting the best outcomes and how can we identify some of those decision-making
10 moments that a transfer of that decision-making to First Peoples would actually lead to far better outcomes? Because those are the groups and those are the experts who are going to know exactly where the pinch points are when you are within that system. They will be able to identify that and that's the thing we are hoping to leverage to then deliver through Treaty the opening up of some of those
15 pinch points.

MR MCAVOY SC: You comment in the submissions at page 41 on the Victorian Home Buyer Fund. I might just ask the video operator to take us to the paragraph beginning "To address". I'll read that paragraph to you from your
20 submissions. It says:

*"To address the increases in the housing market, the Victorian Government created the Victorian Home Buyer Fund, a shared equity scheme to make home ownership more achievable for Victorians. However the program requires
25 participants to partner with the Victorian Government to secure a deposit for a property. This is not a culturally safe option for First Peoples due to the mistrust First Peoples experience with the Victorian Government."*

30 Can you just expand on a little for the Commissioners?

MR RUEBEN BERG: I think it's obviously a ongoing concern for First Peoples, and no doubt made very clear across repeated hearings for Yoorrook, that there are ongoing trust issues with the Victorian government and so if - when there's a compulsion to have to kind of sit within that system to achieve some of
35 these outcomes, sometimes there will understandably be a reluctance to sit within that system and have that engagement with government because of the demonstrable things that have happened across generations to First Peoples through government.

40 **MR MCAVOY SC:** It will be some time for many people in the First Peoples community before they can trust government. You would agree with that?

MR RUEBEN BERG: I would agree with that.

45 **MR MCAVOY SC:** If ever?

MR RUEBEN BERG: Yes. But I'm hopeful that this progress - this process we're going through, when we can actually see agreements made, we can see commitments not just spoken about but actually signed up at a Nation-to-Nation level for Treaties, that will help give some of that capacity to build that trust back.

5

MR MCAVOY SC: Further on, on page 41 you note that:

"The Victorian Government's lack of understanding of tailoring services or programs to the specific needs of First Peoples is also evident in the support programs provided for securing private rental. The Victorian Government has committed funding to the Aboriginal Private Rental Assistance Program, APRAP, which empowers First Peoples to navigate the private rental market. However it does not service the entire state and replicates the same program for non-First Peoples."

10
15

So is it the case that the Commission should understand from that submission that there are parts of the First Peoples community in Victoria that don't get access to this program?

20 **MR RUEBEN BERG:** Correct.

MR MCAVOY SC: And the program is not specifically tailored to First Peoples? Or is it simply a restatement of the non-First Peoples program? Or is there - are you familiar enough with the program to say whether, in fact, it does have aspects to it which make it specifically valuable to First Peoples?

25

MR RUEBEN BERG: I'm not familiar enough with those details, no.

MR MCAVOY SC: But the failure to make it available to First Peoples across the state in that program and the Victorian Home Buyer Fund difficulties indicate that, in creating these programs which First Peoples ought to have access to and ought to be - and could probably easily be tailored in a way to ensure maximum uptake by First Peoples, that hasn't occurred, notwithstanding the framework on housing and homelessness?

30
35

MR RUEBEN BERG: That's correct. And I think in this space, it's very similar - and, again, there's recurring themes again and again - to when we spoke about the issues around employment of if you have to choose between two people you are going to employ, there's a similar conversation about real estate agents, homeowners, if they have to choose between who they are going to provide a house to, they're more likely to provide a house to someone they have a stereotypical positive view of, as compared to someone that they have an unconscious bias against. And that's just the reality we come up again and again and again.

40
45

MS NGARRA MURRAY: Yes. And it's important to note that it's all interconnected between housing, health, education. Like, the grim statistics are

a reflection of colonisation and inequality that we come from, and the government inaction that's happened over decades hasn't helped at all, and it does need a bit of an integrated approach. So looking at whole system change, and that's what Treaty is about. Transformational change. And it takes time because it's really
5 embedded in all systems that we're a part of.

And I think the absence of inherited wealth and community collateral has played a big part in that around the deficit within housing in that thematic area, and I hope that the Aboriginal Housing Board will be part of this hearing and talk to the
10 housing and homeless strategy where it looks at, within a generation, making sure that everybody has a home within our community and looking at homelessness to transitional support that's required to get to renting, where we experience racism, you know when applying for rentals. There's a lot of stories that can be shared there. And then also how we go into home ownership and have that wealth and
15 prosperity that we need into the future.

Because the reality is a lot of our people are poor on their Country and they're homeless too, and they shouldn't live on their Country in that position. So there's a lot of work we need to do within the system to change, and I think it will take
20 time because they've had a 250 year head start on us. So we are unravelling all those complexities. And I think having our experts within health, housing and education, they do play an important role but they're not actually always consulted or resourced or supported to address the inequalities to enable kind of positive change.
25

And they're so stretched across the areas. And you will probably hear that will be a kind of reoccurring theme around the lack of support, because our people know best. We are the experts on our people, our Country, our culture, but we're not respected and valued in that sense to be able to deliver on the majority of our
30 objectives because of the lack of support and resources. But it is important to know that it all goes hand-in-hand across all these thematic areas.

And the statistics represent us. It's us that have 10 less birthdays. It's our old people that we talk about. It is our people in the community that are experiencing
35 racism in everyday interactions. So that connection is real and it's a reality for us too across, you know, the deficit. And we are trying to look at the strength-based and rights-based principles that we need to head into a Treaty era and what that will look like. So the future thinking that we need from our organisations is really important and for them to get Treaty-ready, to shift in that era.
40

Because they played a really important role in our advocacy over generations and the creation of our community-controlled sector and our organisations and that philosophy that we carry, but now it's a different time to go into a different part of our future, and that's what we are trying to shift everyone to, that mindset we need
45 to shift to enable a future with Treaties. And it will be for the generations, so it's going to take us time to get there, but I'm truly confident that we are on the right

path and Yoorrook will create that path, and we will make sure that we hold government to account. So I just wanted to mention that. Thanks.

5 **COMMISSIONER LOVETT:** The advocacy has been there from community -

COMMISSIONER HUNTER: Your microphone is not on.

10 **COMMISSIONER LOVETT:** The advocacy has been there from community but the power and authority is not rested with us. Would that be fair to say?

15 **MS NGARRA MURRAY:** Exactly that. That power and authority and the ability and tools we need, that's what we will be looking at to negotiate in the state-wide Treaty to shift that power and decision-making powers where it applies to our people across those thematic areas.

20 **MR MCAVOY SC:** Ngarra, I might just follow up your comments with a question that - I'm not sure that it's an easy question, but is there a change of mindset that the community organisations are going to need in order to come to terms with a fully self-determining world as well, having been in a situation where they are essentially given the crumbs or told what to do by government agencies for the whole of their existence? Is there a learning curve for the organisations too in changing their mindset?

25 **MS NGARRA MURRAY:** I think that we have all got a role to play and responsibility when it comes to the Treaty landscape. And I think they've had a really strong history, our community-controlled organisations - over 50 years, some of them - so they've played an important role in our advocacy and kind of shaping policy and holding government to account. But I think that there's a new era that we will shift into.

30 And it's all of us together, so how we actually all come together, Traditional Owners, as a community controlled sector, will be really important from a state-wide Treaty level, but also in the local Treaties, because Traditional Owners will have their aspirations and goals within their own Countries, so it's important those relationships are respected but also respecting the history and the philosophy of our community controlled sector, because they have an important role to play.

40 They are our experts. Like, we don't sit here as health experts. A good example for us is where we created the Self-Determination Fund and Trust because we wanted that financial expertise, and we still have, you know, the control of the fund but we put it to the experts to lead. So that's an important design within the system we currently are kind of looking around our Treaty foundation. So there's definitely ways we can look at relationships in regards to that. But I think that's just one example where we've got that power.

And that's what we want to do, is give that power and autonomy to the organisations to lead, because they know best the solutions, you know, to their own problems in their communities. So, yeah, I hope that answers your question. It's a big question.

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MR MCAVOY SC: Yes. It kind of answers the question. Thank you. We will come back to ask some questions about the Self-Determination Fund a little bit later. I just want to conclude these questions in relation in relation to housing.

10 **COMMISSIONER LOVETT:** Can I jump in for one sec. Just to complement that question there - and that was directed at what community need to do - but can we hear from you around what government need to do in order to enable this to happen?

15 **MR RUEBEN BERG:** Yes, I think government is on this journey, and they've been talking about self-determination for a while now, as you're well aware, as the Commission is well aware. And I think they're starting to slowly unpack what role they need to play in this. And it's gradual steps we continue to see, but, ultimately, it's about the elements of government and public servants themselves realising that
20 what we are headed towards is a space where First Peoples are empowered to make decisions about things. And so there needs to be that mindset shift within government about that they won't necessarily have all the control and have control of all the levers anymore.

25 There's going to be a space where we agree that this is a space where First Peoples should be making the decisions. And that's going to be a significant shift for some elements of government, but I think it's one that we are on a strong journey towards.

30 **COMMISSIONER LOVETT:** Great. I mean, because when the Premier came and gave evidence a few weeks back, the Premier did articulate to us that some Departments will be a little bit more progressed than others. Is there any sort of - do youse have any views on that? Should government just be ready to go when youse are ready to go?

35

MR RUEBEN BERG: I think, as we've said before, that you can't rush some of these things, because we've got to make sure that if we do transition, we transition with strength, and part of that is making sure that the departments themselves are ready. But the departments are gearing themselves up, as they should be, to be
40 ready for this but this is also - it's not a sprint; it's a marathon.

MR MCAVOY SC: Thank you. So on page 41 of the submission, you set out two recommendations at recommendation 3.1 and 3.2 in relation to affordable housing programs at 3.1, and access to private rental at 3.2. At 3.1, it's noted that:

45

"The Assembly recommends that Yoorrook research existing affordable housing programs that provide opportunities to enter the housing market."

You refer to the Mana-na woorn-tyeen maar-takoort recommendation of:

5 *"...various options to make homeownership more accessible for First Peoples under its Goal 3."*

To be clear, the recommendation that the Assembly is making is that Yoorrook use some of its resources to do that research and make some of its own recommendations?

10

MR RUEBEN BERG: Yes, I think there has been some powerful recommendations already put forward. But I think it's important to be able to look at those recommendations in the broader scope of the conversations we're having as well.

15

MR MCAVOY SC: And then with respect to recommendation 3.2:

20 *"The Assembly recommends that Yoorrook review the report and recommendations from the Residential Tenancy Commissioner on Aboriginal private rental access in Victoria, titled Excluded from the Start."*

25 And the recommendations under that particular report. So there's clearly a view that access to private rental remains a problem. You've spoken about the difficulties of obtaining private rental for First Peoples, dealing with more overt racism but sometimes bias - unconscious bias.

MR RUEBEN BERG: Correct.

30 **MR MCAVOY SC:** Then at page 43, you make recommendation 3.3 regarding urgent support for First Peoples households on the VHR waiting list. What sort of support are you recommending at that paragraph? Are you able to speak to that?

35 **MR RUEBEN BERG:** I don't think I have anything more specific to add than what the recommendation has there. But that's just referring to 3.3, not 3.4; is that correct?

40 **MR MCAVOY SC:** Yes, that's correct. Recommendation 3.4 is that there be transfer of public housing units to long-term renters, and there's a reference in that - the submission to a program in the 1960s when the Housing Commission started selling public housing units to tenant families to generate more funding. And you observe:

45 *"Assembly members have acknowledged that their own families who have lifted in Victorian Government-owned public housing units for over 30 to 40 years have likely paid the equivalent rent to paying off a mortgage on a private property."*

So:

5 *"It is recommended that Yoorrook research the historic transfer of government-owned public housing units to understand the possibilities of transferring current public housing units to First Peoples families to support the opportunity to create generational wealth."*

10 There are programs that exist in other places around the country, and I think some Federal Government programs for transfer of housing that was held by Aboriginal Housing Co-Ops to First Peoples. Is that the type of program that is being referred to there?

15 **MR RUEBEN BERG:** Yes. And this is - as it says there, this is something we are hearing about a lot from our members, echoing the concerns of their community that it just doesn't seem right that we've got Elders having been in places for that amount of time and having paid enough that they could have purchased it but not being in that position to be able to have done so.

20 **MR MCAVOY SC:** Then further on page 43, the recommendation 3.5 with respect to the accountability for mainstream organisations providing housing to First Peoples. It is noted that:

25 *"In 2020, the Community Housing Industry Association of Victoria launched the Community Housing Aboriginal Cultural Safety Framework which provides for guidance and tools for mainstream community housing providers to support First Peoples renters in a culturally safe way."*

It's also observed in your submission:

30 *"However, there are no accountability measures or reporting mechanisms to ensure the tools are being implemented. The Assembly recommends that Yoorrook ensure the community housing sector is accountable for providing support to First Peoples renters in a culturally safe way so that they have more options to access community housing."*

35 And you are asking Yoorrook to take that up as one of its research areas and recommendations.

40 **MR RUEBEN BERG:** Correct. And I think it's important to highlight that this is, again, a consistent theme in that we want to make sure that there's opportunities for First Peoples to access First Peoples-led services in a variety of spaces, but there still needs to be that element of self-determination that if they choose to access other services, they should be able to, and there are still obligations on the State to provide those service in an appropriate way. And so there does need to be some level of accountability to make sure that's also happening.

45

MR MCAVOY SC: Yes. Indeed, recommendation 3.6 refers to the release of the Social Housing Regulation Review and it's noted:

5 *"The Assembly understands that the Victorian Government have reviewed the Social Housing Regulations to identify future regulatory arrangements that best support social housing, renters and communities, which included recommendations to make it easier for Aboriginal Community Controlled Organisations to become registered housing providers. The final report was delivered to the Minister on 31 May 2022 but has not been published publicly. The Assembly recommends that Yoorrook compel the Victorian Government to release this report and address the recommendations."*

10

MR RUEBEN BERG: Correct.

15 **MR MCAVOY SC:** There are then, on page 44, some urgent reforms referred to with recommendation 3.7 with respect to homelessness. The recommendation at 3.7 is that the government implement recommendations from The Blueprint for an Aboriginal-Specific Homelessness System. And again:

20 *"The Assembly recommends that Yoorrook review the framework to implement a First Peoples-specific homelessness system developed as an outcome of the Mana-na-woorn-tyeen maar-takoort framework. It outlines the barriers First People currently face and provides the pathway to creating a better system to support First Peoples out of homelessness."*

25 Again, homelessness isn't an area that either of you have worked in directly?

25

MR RUEBEN BERG: No.

30 **MR MCAVOY SC:** But clearly the Blueprint for Specific Homelessness System has done much of the work that needs to be done and it's a question of ensuring that the - that that Blueprint is implemented properly. Is that the recommendation?

35 **MR RUEBEN BERG:** That's correct. And it's another one of these areas where there is already identified some action that should be undertaken, and it should be undertaken. There's no need to wait for a Treaty process to undertake recommendations that have already been made. And we see that in the future there is scope for some of these ideas to fall under the lens of Treaty, particularly in terms of future adjustments and future amendments to such strategies and plans to make sure that there's a duty to consult with First Peoples on that, not that it's just consulted on the whims of government at the time, but there's an obligation through Treaty to consult on these initiatives.

40
45 But there are initiatives in place now. There are at that stages in place that have already been identified. And we want to make sure the government is delivering on these things, and I look forward to hearing Yoorrook have direct conversations with the parts of government responsible for this.

MR MCAVOY SC: Finally, there's urgent recommendations, urgent reforms that are recommended with respect to transitional housing, and that's at page 44 and goes over to page 45 in recommendation 3.8. And that's that the government adopt a housing-first model, and:

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"The Assembly picks up the recommendation from the Mana-na woorn-tyeen maar-takoort's recommendations for a housing-first model as a proven approach which connects peoples experiencing homelessness with Aboriginal Housing Victoria."

10

Again, this is appointing government to an existing program and asking for implementation of that program - I think it's - the terms used are:

"...as quickly as possible and without conditions."

15

MR RUEBEN BERG: And I would particularly actually highlight that next line that acknowledges that housing is a human right, and that is absolutely critical to have that understanding that this is not some high benchmark of people being able to have housing; it's a basic human right to be able to have somewhere to live. We should not be living in a society where there are people who don't have a roof over their head or somewhere to live. And, unfortunately, this is an area that affects many peoples, but it has a particular impact on First Peoples as well.

20

And I'm not sure what type of society we want to have, but I'm pretty confident we want to have one where everybody has a chance to have a roof over their head.

25

MR MCAVOY SC: Well, it's not only - and not diminishing from the human rights aspect of the right to secure housing, in the hearings before this Commission on the over-incarceration rates and child protection, the absence of suitable transitional housing was shown to be one of the indicators of recidivism.

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MR RUEBEN BERG: Absolutely.

MR MCAVOY SC: And so people were being released from institutions not having housing to go to and finding themselves back in contact with the justice system.

35

MR RUEBEN BERG: I did, if I could, just want to comment more broadly on some of these statistics across all these areas, because I often fear sometimes that when we are highlighting some of these discrepancies in outcomes for the First Peoples communities, that there could be a tendency for some people to look at that and get the impression that there's some sort of inherent deficiency in First Peoples that would mean they have these discrepancies.

40

And that would be completely the opposite, wrong outcome to draw from this, the wrong conclusion to draw from this. Regardless of who anybody was, if they were placed in the same shoes of First Peoples across these generations, and

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experienced the same discrimination and exclusion, they would find themselves in the same position. This is nothing to do with some inherent flaw in us as First Peoples.

5 In fact, I would offer that because of the strength we have as a people, we are -
despite all this, we'd be in a better place than other communities might find
themselves having endured the same atrocities. And I also think that sometimes
when we are looking at the statistics - and it's useful to look at statistics, but there's
10 also a tendency to think, well, from other people's experience, they suffered
hardship and they were able to succeed.

And that's true. We can point to cases where First Peoples have been able to
succeed despite these hardships, and I would say I'm a proud example of that, that
my fathered experienced extreme hardships and was able to work his way out of
15 that and ensure that his family find ourselves in the positions we are. But it's
about the odds. The likelihood that Aboriginal people are able to overcome all
these things and succeed is so low, and the vast majority of our people can't do
that because of all these compounding things.

20 And so I just think that's so critical for the broader community to understand when
they are coming to these conversations, that there's not some inherent flaw with us
as peoples, and that we're not saying that there aren't the very few of us who are
able to prevail despite this, but that this is the situation we find ourselves in, and
that's really, really critical, I think, to understand.

25
MR MCAVOY SC: The Terms of Reference for this Commission asked the
Commissioners to look at the past and ongoing injustices. And so, in some senses,
there's no capacity to avoid discussion of some of these issues, or all of these
issues, indeed. But it also asks the Commission to look at the resilience of First
30 Peoples in Victoria. And so there are many examples of the way in which,
notwithstanding the incredible hardship, First Peoples in Victoria have maintained
their communities and their capacity for care and - care for their Country and care
for their communities in a way that perhaps other communities wouldn't. Would
you agree with that summary?

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MR RUEBEN BERG: Absolutely.

COMMISSIONER HUNTER: Can I just add that this morning from Professor
Lovett that we heard exactly that through his study, that it's - I think he was talking
40 about particularly health statistics, that people think we are diseased when you
look at - you know, that's the interpretation. And I think you've said on a bit
broader scale there, that people don't take in all the factors to - that's the past is the
present and having a look at why it is the way it is. So it was great hearing that
again, two sessions in a row, I think.

45

It just goes that we need to look deeper and understand the past and people really need to understand those connections. And we take that job very seriously in the Commission, to make sure. So thank you for reiterating that.

5 **MR MCAVOY SC:** Now, I intend to take you to your submissions on economic matters. Firstly, I might ask whether it's appropriate to read from your written submissions for the Commissioners to understand, I suppose, that there is an amount of work that is still being done by the Assembly in relation to the form and shape and perhaps the content of economic self-determination as far as the
10 Treaties process is concerned.

MR RUEBEN BERG: That's correct.

15 **MR MCAVOY SC:** And so that's both at a state-wide level, yes?

MR RUEBEN BERG: Mmm.

20 **MR MCAVOY SC:** But is there also some consideration that the Assembly has to make in respect of the right of First Nations to be self-determining about their economic development?

25 **MR RUEBEN BERG:** Yes. And, ultimately, that will be up to the Traditional Owner groups themselves when they are negotiating their local Traditional Owner Treaties but there's definitely a role in the system-wide reform within that space for the Assembly to play, absolutely.

MR MCAVOY SC: So can you just perhaps explain for the Commissioners how the statutory Self-Determination Fund fits within that framework?

30 **MR RUEBEN BERG:** Yeah, absolutely. So it was one of the key elements of the Treaty process that needed to be put in place, was this Self-Determination Fund. So it was required under the legislation that also set out the Treaty process more broadly. And it has two key focuses, the Self-Determination Fund. One is on - the initial focus is on supporting Traditional Owner groups as they go about
35 progressing their interests in Treaty, and the longer-term priority is around wealth and prosperity for First Peoples.

40 And it's - to my mind, it's a really powerful example and a model of where we are headed towards in a self-determined space. It's in the name itself, the Self-Determination Fund, and, surprisingly, when we were having negotiations with the State about this - not to go into too much detail - but it was a constant thing we needed to remind the State that it's called the Self-Determination Fund because it's supposed to be self-determined by First Peoples.

45 And we have set it up as essentially, I would say, an independent element of the Assembly. We recognise that some of the decisions, the fund needs to make needs to be made at arm's-length from the 33 members. And so we have created this

entity as the Self-Determination Fund as a trust. We have appointed the trustees who manage it. We have given them directions, but they manage the day-to-day operations of that fund. And the State has transferred the initial amount of funds to that, but aside from that, it is up to the Assembly to ensure the oversight of that fund. And it's a really powerful example of the start towards really true self-determination in this space. I think there's still scope to grow within how that can operate, but it's a really strong starting point.

MR MCAVOY SC: So in listening to your answer, are the Commissioners to understand that perhaps in earlier discussions with the State, some of those tendrils that you referred to might have been lingering in relation to that fund?

MR RUEBEN BERG: Yes, that would be correct.

MR MCAVOY SC: And has that been resolved to your satisfaction at this point?

MR RUEBEN BERG: Yeah. And I think there is, obviously, obligations the State has. When they're talking about transferring funds to First Peoples there are obligations to the broader community. And we're well aware of that. And so we needed to make sure that the State could identify what its interests were, what did it want to make sure that, at a high level, the fund had in place to ensure it was undertaking good governance? And then we gave warranties to show that, yes, we have those things in place.

And we recognise that as we progress these conversations, that requirement for oversight, for want of a better word, of how a body like the future Assembly, a body like the Fund undertakes its business is really important because we not only want to have the trust of First Peoples in how we do our business; we need to make sure we have the trust of the broader community as well. So we don't shy away from the fact that there needs to be some level of oversight of these self-determined entities we're creating, but there needs to be a limit of how far down those tendrils go.

MR MCAVOY SC: Given that the Assembly is still doing work on the economic independence aspect, I don't propose to ask you too detailed questions but as the Assembly's position advances, is it possible for the Assembly to make further written submissions and inform the - this Commission as to where it sees those funds going?

MR RUEBEN BERG: Absolutely. Happy to give a commitment to the Commissioners to do so.

MR MCAVOY SC: One of the issues that does arise - and you may wish to comment on it or not, but the observation can be made that, in the course of the Treaty process, it's likely that there will be large, difficult policy areas to navigate, which may have the effect of opening up certain aspects of redress or reparations.

In having those policy discussions, the observation could be made that the Assembly, being the collective of its members, is in a far better and perhaps more powerful bargaining position than individual First Nations. Is it the case that the Assembly's going to leave all of the negotiations about the individual redress to the First Nations? Or will it do, perhaps as requested by First Nations, in terms of developing those broader political policy strongholds, I suppose? Head lands, perhaps.

MR RUEBEN BERG: I guess I look at it through the lens of there is a clear priority of the fund to look at wealth and prosperity for our communities moving forward, and a key part of that is being able to make sure that all First Peoples have that opportunity to have the same levels of success that other members of the community does. And what it takes to get us there is what we are still going to have conversations about, but it's very much a forward-focused approach on making sure that the next generations have a greater chance of success than the previous ones.

And we will be obviously wanting to work closely with Traditional Owner groups and other groups who want to advocate in that space to make sure we have a coordinated approach to that and to leverage the role of the Assembly within those conversations.

MR MCAVOY SC: Yes. It's not - well, your submission doesn't say this, and I've not heard you say this orally today, but is it the case that the Assembly would rule out there being an additional fund or the holding, for instance, of redress in a pool to be distributed as needed later in the negotiation period for First Nations?

MR RUEBEN BERG: I think that's one of many different options that we are looking for about what the best way to move forward on this space will be.

MR MCAVOY SC: Thank you. The Commission will hear evidence from the Treasurer on the last day of these hearings, most likely. Are there any particular messages you would take this opportunity to pass to the Treasurer from the Assembly via the Commission?

MR RUEBEN BERG: I think that we've seen within the setting up of the Self-Determination Fund there was awareness that the funds that have been provided are not sufficient to meet the needs of what the fund has been established for, and we know there's going to need to be an ongoing conversation about that. So that would be of interest, to understand where the government's current position on that is.

But also we know that in other spheres there are conversations around how First Peoples can better engage with the economy and draw from a lot of the powerful testimony we heard particularly around land injustice. And just to reiterate that we already have a First Peoples-led fund that can actually service and support those sorts of contributions and conversations. So there's no need to necessarily

reinvent the wheel, would be a conversation I would be making sure was had there.

5 **MR MCAVOY SC:** Thank you. Now, Commissioners, I understand that Ngarra would like to make some closing remarks. Are any other questions in relation to the economic interests or the other topics that you might wish to ask before we conclude this session?

10 **COMMISSIONER LOVETT:** I've got a couple. I'm going to be asking many people this. But I asked yesterday. I asked earlier about Closing the Gap targets and the progress towards Closing the Gap. We've talked a lot about the targets over these hearings to date as well, but also progressing work of Treaty. Clearly that's a direct function that youse Mob have. Do you agree that we need to progress the work in Closing the Gap, in parallel to the work of progressing
15 Treaty?

MR RUEBEN BERG: Definitely.

20 **COMMISSIONER LOVETT:** And when our people are used as political footballs, what impacts does that have on our people's health and wellbeing?

25 **MR RUEBEN BERG:** It can absolutely have a significant impact on our health and wellbeing when it does occur. And, sadly, it occurs far too often. But I think that, within my conversations with the First Peoples community and with the ACCOs, with the Traditional Owner groups, there is a strong sense of us being united in this space and that it is through that that we'll be - again demonstrate our resilience, but we will hope that there will not be that continued treating of us as political footballs and call on government to not treat us as political footballs. But
30 I know that through our - through unity, we have strength, and we can weather those storms as well. I would rather not have to weather the storms, but I also have confidence that with our unified approach, we can.

35 **COMMISSIONER LOVETT:** And just one other thing, the Treasurer was mentioned earlier. Have youse had much engagement with the Treasurer directly yourselves to date?

40 **MR RUEBEN BERG:** Not to date. I did just want to add just one other element before we go to Ngarra, if I may. It was just - I know we have been speaking at times about this contrast between Treaty and the timing of what needs to happen now, and whilst I know that, for Treaty, some of those outcomes are much longer-term that we're hoping to achieve, we are hopeful to achieve some shorter-term outcomes in the not-too-distant future as well.

45 So there needs to be that, I think, strong consideration of what are those structural things that we are able to achieve through Treaty in the not-too-distant future, and what are those things that are immediate that need to be done and make sure that all that is happening. Because I don't want to give the - mislead this idea that

Treaty is still a long way from achieving some of its outcomes. We are hopeful to get some of the first outcomes around Treaty within the next 18 months to two years.

- 5 But there's still a lot more work that needs to be done both from ourselves but also from government to actually start delivering on the things they can be delivering now.

10 **MR MCAVOY SC:** Thank you, Commissioner. I might invite you now to make some closing remarks, Ngarra.

MS NGARRA MURRAY: Just in closing on behalf of the First Peoples' Assembly I want to give our profound thanks to the Commissioners for the important work that you are all doing, and we thank you and the whole team.
15 And we want to extend our thanks to everyone who was taken a seat. And it's not easy at times but I know a lot of the conversations had here are hard going, but I think we have really got to look back if we want to move forward together, so we can see how important the work that you are doing, and our community that come in and tell their stories and share their truths.

20 Most of all we want to thank all those people that come in and contribute to the truth-telling process and share their stories. We know there will be more Mob coming in over the next few weeks to tell their truths, and a lot of our Mobs have talked about the hardships that people have gone through and explained the
25 barriers and challenges they still face and have given us all a glimpse of needs, hopes and aspirations for the future so these truths are helping us find the path forward, and Treaty will help keep us all on the path.

30 So I really think Victorians can handle the truth, they are ready for it and they need it. And a lot of people, even the Premier as we learnt earlier this month, don't know the true history of our country and the extent of what has happened to our people. So it's hard for them to understand the problems that grew out of that history, which we still face today, which we have talked a bit about today. And I'm sure the community-controlled sector will reiterate that as well. And this is
35 why, you know, Yoorrook is just so vital to our future. So, again, just thank you on behalf of the Assembly and it will help us to get Treaty done and when we really thrive and come together, you know, we will have a better shared future.

40 I think that our people have a lot to offer in this state. And most people who call Victoria home ought to know about our culture and our story and expand their knowledge of our history. So I thank you for taking up these roles and I know that these conversations are helping us to move into the future with a Treaty landscape. So thank you, and appreciate your thanks. And thank you, Tony.

45 **CHAIR:** Thank you so much. I would just like to ask you one more question before we finish and that is: the Premier has also committed to making an apology in the future and we have no idea of what her thinking is there. I don't know if

you have you've got an inkling or if she has got something in mind that she hasn't told us, but we are mindful of that as well, that there's something there on the agenda. But no real communication, is there, about anything at this stage about it. But just noting it for the record.

5

MR RUEBEN BERG: Thank you.

MR MCAVOY SC: Chair, there are some administrative matters to attend to before we rise for the day. There is a tender list which you have been provided with, firstly with respect to this morning's witness, Professor Raymond Lovett. There are four documents in the tender list. And then with respect to this afternoon's witnesses on behalf of the First Peoples' Assembly of Victoria, there are three documents, and they all appear on the tender list, and I tender those documents. Thank you.

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15

CHAIR: Thank you. They shall be entered into the records. Thank you very much, Counsel.

MR MCAVOY SC: There is nothing further this afternoon, Chair, and we rise today to return next week with more witnesses. There won't be any further witnesses this week, and that concludes the hearings for today.

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CHAIR: Thank you.

COMMISSIONER LOVETT: Thank you.

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COMMISSIONER HUNTER: Thank you.

CHAIR: The Commission adjourns until the next hearings. Thank you.

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<THE WITNESSES WITHDREW

<THE HEARING ADJOURNED AT 2.40 PM