YOORROOK Justice Commission

TRANSCRIPT OF DESCENDANTS DAY – PUBLIC HEARING

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THE HON ANTHONY NORTH KC, Commissioner

WEDNESDAY, 4 SEPTEMBER 2024 AT 10:06 AM (AEST)

DESCENDANTS DAY

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<THE HEARING COMMENCED AT 10:06 AM

CHAIR: Good morning. Welcome. Welcome to this historic hearing, Descendants Day. Welcome to Yoorrook Justice Commission's hearing. We have dedicated this hearing to be focused on the evidence of non-First Peoples witnesses who will share their personal connection to Victoria's colonial past. We will be hearing from Elizabeth Balderstone, Peter Sharp and Dr Katrina Kell. Their deeply personal evidence will help shed a light on key event on the colonisation of Victoria from the first permanent European settlement in the 1830s to the destructive protection legislation of the late 1800s.

I urge all Victorians to watch the hearing and to really listen deeply to the evidence. When we understand what has happened in the past and how this impacts the present, we can create a better future and have a better understanding between all Victorians. I would like to thank everybody who is watching online, welcome, and acknowledge the people that come and sit in the room and thank you for being here as well. We value the presence of people that have been following Yoorrook since the beginning in the hearings and some come and sit in this room every time we have a hearing.

Before we commence the hearing, I would like to invite Commissioner Hunter to give a Welcome to Country.

COMMISSIONER HUNTER: Thank you, Chair. I would like to welcome you to my ancestral land, the lands of the Wurundjeri, and pay homage to my ancestors and Elders, to all those who come before us as Aboriginal people and told their stories, to those who continue to tell their stories. I want to acknowledge other Aboriginal people in the room. I want to acknowledge your ancestors and Elders and particularly those online, that, in light of this Yoorrook Justice Commission, I want to acknowledge today's hearings of descendants and really acknowledge the Traditional Owners of this State and the fight that they have had to continue to seek justice.

I want to acknowledge those online as well. I would just also like to make people aware of some of the evidence today may include reference to historic events and language that people may find distressing and offensive. If you are affected by the content and would like support, please contact 13YARN on 13 92 76 or Lifeline on 13 11 14. Today will be hard to listen to, hard to tell, and we just have to lean into that. So may Bunjil watch over us as we conduct Aboriginal business.

CHAIR: Thank you, Commissioner Hunter. I now call on Commissioner North to make opening remarks, please.

COMMISSIONER NORTH: Thank you, Chair, and thank you, Commissioner Hunter for the warmth and generosity of your Welcome to Country. I add the Chair's welcome to those who are here today and those who are listening online to the proceedings. In earlier hearings, we heard how the lands of Victoria was stolen from First Nations people when the settlers arrived. The settlers took the land without any

legal right. They had to remove First Nations people who occupied the land to make way for their sheep and other animals.

We heard that when the First Nations people were in the way, they were slaughtered. 20% of the original population was massacred to make way for the unlawful seizure of the land of the First Nations people. Parliament then passed laws to concentrate First Nations people into reserves where their lives were controlled in detail. These laws were designed to assist the elimination of First Nations people. We heard how the 1886 Half-Caste Act split up families so that those of mixed blood were forced off the reserves which had become their homes. In this way, the laws were used to force assimilation of First Nations people as a method of elimination.

The theft of land, the massacres which followed, and the legislation designed to eliminate the population of First Nation people, are parts of the horror of our Victorian history. The many witnesses, especially First Nations people, told the commission the effects of these events impact on their lives today. As Commissioners, we felt the ongoing trauma in the powerful evidence given by First Nations people to the commission. These are the facts we heard. These are the truths we heard. But for non-Indigenous people like me, there has been silence. We did not know of the horror of our history. We did not know the harm inflicted on First Nations people and we did not know the ongoing damage which, as we heard, continues to this day.

This truth commission was created with a vision of a better Victoria. A Victoria which has come to terms with its dark history. After establishing the truth of our history, this commission is mandated to develop a shared understanding among all Victorians of the systemic injustice and intergenerational trauma flowing from our history. That requires us all to understand our dark past.

Today's non-Indigenous witnesses have family links to the theft of land, the massacres or the Half-Caste Act. They have understood the brutality of our history. They come to share that understanding. They stand as examples of the way non-Indigenous people can face the truth of our past and by sharing, build bridges between the oppressed and those of us who have inherited the past of the oppressors. Thank you to our three witnesses today for your courage in coming forward. May you inspire others to come to the commission to share their understanding of the injustice of our past.

No longer can we, in the non-Indigenous community, say that we did not know. The silence is broken. The truth gives us a choice. In the words of Desmond Tutu, "If you are neutral in situations of injustice, you have chosen the side of the oppressor." Thank you.

CHAIR: Thank you, Commissioner North. Thank you very much. May we have appearances, please, counsel.

MR GOODWIN: Thank you, Chair, Ms Fitzgerald and I appear as counsel assisting today. I will take the witness of Elizabeth Balderstone to commence the hearing. I would like to thank Commissioner Hunter for her welcome and acknowledge her ancestors and the ancestors of the Wurundjeri peoples and pay my respects to them, their Elders and their entire community. I do that as a Yuin person from the south-east coast of New South Wales. First-up, we have Elizabeth Balderstone available to give evidence and to speak to her submission, if we are ready to commence with that. Thank you, Chair. Elizabeth, thank you for coming today. Could you please introduce yourself to the Commissioners.

MS BALDERSTONE: I'm Elizabeth Balderstone. I live on Gunaikurnai country, Gippsland, Eastern Victoria.

MR GOODWIN: I also invite you to respond to the Commissioner.

MS BALDERSTONE: I would very much like to thank you for your Welcome to Country today and your powerful words, Commissioner North, because I think that sums up so much of what myself and a lot of others are wanting to say and have these stories told to Victoria and the wider Australian community. It is a very significant moment to me as an individual and for our family to be sitting here today at this commission. I would like to acknowledge and pay my respect to the Traditional Owners of this land, the Wurundjeri Nation, the Wurundjeri people of the Kulin Nation. But I would also like to acknowledge and pay my respect to all the Traditional Owners who live near Warrigal Creek in Gippsland, the Brataualung People of the Gunaikurnai Nation, who cared for and protected the land for tens of thousands of years.

They lived on that land in balance with a rich coastal environment. The Yauung clan, in particular, hunted and sheltered, raised families, celebrated, mourned, told stories all along the banks of the creek and behind the dunes of the Ninety Mile Beach. I want to acknowledge and pay respect to their Elders, past present and emerging. I now live on this land close to the site of the Warrigal Creek Massacre which is the focus of my submission. Thank you.

CHAIR: Thank you very much.

MR GOODWIN: Elizabeth, do you undertake to tell the truth to the Yoorrook Justice Commission today? Thank you. As you mentioned, you prepared a submission for the Commission dated 24 August to 24; that's correct? Thank you. Chair, I would like to tender that submission as well as, at this moment, all of the documents on the tender list. So, I will tender those documents relevant to Elizabeth Balderstone, Peter Sharp and Dr Katrina Kell.

CHAIR: They will be entered into our records.

MR GOODWIN: Thank you, Chair. Elizabeth, as you mentioned, your submission focuses on your families as the most recent custodians of the Warrigal Creek

Massacre site. Before we discuss that story, you wrote in your submission that you were inspired to prepare the submission by Suzannah Henty's appearance before the Commission. I just wanted to ask what inspired you about her appearance to provide your submission and appear to give evidence to the Commissioners today.

MS BALDERSTONE: I had been encouraged and thinking of doing - and wanting to do a submission but it was when I read and watched her sort of appearance that really inspired me to sit down and write and do it because her presentation was so powerful. So honest. So brave. And I think she led the way for people like me when, you know, it's so important that non-Indigenous Victorians standing up and using this opportunity. I'm really grateful to the Victorian Government for leading the way in Australia with truth-telling. And so it just was an obvious thing to follow Suzannah's lead and speak from the point of view of my family's story and our property that we care for now, the story of that property.

MR GOODWIN: Could you tell us a little bit about your own family history.

MS BALDERSTONE: I grew up in Melbourne. I had a very privileged upbringing. I'm very grateful for being part of a strong family and extended family but I had some relatives on my side that were farming. So I did spend time on farms and country but I led a very typical life of the '50s and '60s growing up. I had many opportunities that I'm always grateful to.

MR GOODWIN: And how did you come to visit and eventually live at Warrigal Creek?

MS BALDERSTONE: As I say in my submission, in May 1974, just over 50 years ago, I was heading to Wilsons Promontory with university friends for a holiday and some hiking and I happened to drop another friend off at the Warrigal Creek farming property. She was working there as a jillaroo and I met Alistair, who I later married - reconnected with and later married. And so by a stroke - a fateful moment that day, I guess, I met Alistair, you know, which was a terrific wonderful moment in my life, and then life has unfolded since then and I eventually moved full-time to Warrigal Creek in 1980.

MR GOODWIN: What do you know about the (inaudible) history associated with Warrigal Creek?

MS BALDERSTONE: The - my - Alistair's grandfather moved to that area from Ballarat in the late 1880s. Took up some paddocks in the district and bought and sold and lost land, like a lot of early colonial settlers, and eventually accumulated a number of what are now paddocks and then the homestead block, which contains the - which became the massacre site in 1910 and moved to the property then.

MR GOODWIN: You have two daughters with Alistair and you have been the sole custodian of the farm after Alistair's untimely death in the late 1980s; that's right?

MS BALDERSTONE: Yes. And my daughters are present today, which is wonderful.

MR GOODWIN: And you also now have a number of grandchildren who continue as part of the family and are connected to that site?

MS BALDERSTONE: Yes.

MR GOODWIN: We welcome all participation at this commission. In terms of the name Warrigal Creek, your submission discusses the potential origin of that name. Could you just let the Commissioners know what stands to be the origins of the name Warrigal Creek?

MS BALDERSTONE: Well, as I say, we are not 100% sure. It appears that the European settlement came to Gippsland and to Port Albert in 1841. The massacre happened in mid-1843 and from our research to date the first references to that area as Warrigal Creek was in 1844. I think a lot of - you know, the name is from the Dharug people. Warrigal is "wild dog" but there are other interpretations of it and I say we are led by that. It has been suggested that - it can also be a reference to "brave warrior" and I believe the (indistinct) people were defending that land as best they could under impossible odds but we are very open to any suggestions.

MR GOODWIN: Before we get to the nature of those historical events associated with the Warrigal Creek Massacre, I just wondered if you could let the Commissioners know how the farm operates today and what occurs on the land currently.

MS BALDERSTONE: When the Irvings started buying areas of the farm, and them homestead area, and since 1910 the farm has grown and then, with what happens with a lot of family farms, splitting the partnership and it is a smaller size again now but it is a significant-sized farming property. We grow fine Merino wool, beef and lamb, and have some irrigation. We have also - I have had a huge passion for the Landcare movement and focused on protecting the remnant bush on the property and waterways and linking those with revegetation and that has been a real priority for us as well as of the productive side of the farm and hopefully doing that as sensitively as we can but it is very challenging as farmers to do that.

MR GOODWIN: I can go to your submission, you have included a number of photographs of the farm, if I can go to, first, the photos on what is page 5 of the submission, that's at 0064 (audio lost) these are a number of photos, as I understand it, Elizabeth, of the farm in operation?

MS BALDERSTONE: Yes. Well, that one clearly is a lot of sheep that have been shorn and, I guess, gives a sense of the landscape as well.

MR GOODWIN: Now, to the photo underneath that, so this is in regard to some of your comments about Landcare management and sustainable operations. Your

submission discusses some of the activities that have been undertaken on the farm in terms of rejuvenation of land.

MS BALDERSTONE: As I said, that's been a real priority for us and we now have sort of close to 18% of the property fenced off in remnants, revegetated areas, a large area around Jack Smith Lake State Game Reserve and recently 50 hectares have been seeded with native vegetation as part of the carbon project, which locks the land up for 25 years as well.

MR GOODWIN: You can see the effects of some of those activities in the next photos on p.7. This is at 0066. So this is a photo of the creek near the homestead before fencing off, as you just mentioned, and then, subsequently, if we go to the next photograph, you can see the difference between the creek prior to and after fencing off. Is that the type of changes that you have seen in a number of the parts of the property?

MS BALDERSTONE: Yes. It definitely is and it's been a really rewarding process. We often try and picture the land, what it was like, and clearly we can't go back to that, but I think, in re-establishing these corridors and waterways, preventing run-off going into creeks and waterways is all sort of balancing that to hopefully help the environment.

MR GOODWIN: And something that's quite striking about your submission is that you consistently use the language of custodianship rather than ownership regarding your own relationship with the farm and I just wanted to ask: why do you choose to use that language in particular?

MS BALDERSTONE: I think it's used quite a lot now and, to me, it's a much more comfortable way of talking about - I mean technically I know we do own the land, the title to the land, which I acknowledge was never ceded but our family had come to it later and - but the term "custodianship" really reflects, I guess, what I feel in my time being there. I want to be looking after it as well as having the privilege and challenge of farming it. But it just sits more comfortably. And I think it's used more and more by a lot of people. There would be some that would not use it, obviously, but to us as a family it's the right term for it. And especially given the, you know, story behind it all. And we are only passing through and we hope that future custodians care for it too.

MR GOODWIN: Turning then to the Warrigal Creek Massacre being a significant site that's part of your property, how did you come to know about the Warrigal Creek Massacre?

MS BALDERSTONE: When I was first visiting, I can't remember exactly and, clearly, my understanding of it has changed and moved over these decades, but right from my early days there it was acknowledged there was a sort of respect to that area. But this was the mid-70s. I think we all knew that it was significant but let it sit gently, I guess. And locally it's always been written about in histories of the Alberton

Shire and the district. It's referred to a lot. And as I say in my submission, my late father-in-law, who was a very keen and respected historian, wrote his first piece on the property in 1974, when he would have been 65, or so and he - a fifth of that article is about the massacre and what happened in those early colonial settlement days. So I think he led the way, really, for me and for Alistair, and the rest of the family, in acknowledging it but, look, I would agree back then it was in a different sense to what we do now.

MR GOODWIN: But it wasn't in the sense of a hidden historical story.

MS BALDERSTONE: No.

MR GOODWIN: It was a well-known fact?

MS BALDERSTONE: Yes.

MR GOODWIN: In relation to not only the family that you married into but, more generally, the community around it?

MS BALDERSTONE: That's correct. Yes. And the community in different ways certainly have always acknowledged it.

MR GOODWIN: And what do you know about the event specifically?

MS BALDERSTONE: As I say, again, there is a lot of people who have written and researched in huge detail the story of what happened in 1843 but it was, as I said, only two years after the first European settlement of Gippsland. There were obviously issues and clashes between the Traditional Owners and the settlers coming in and it culminated. There was the probable murder of Ronald Macalister who was the nephew of a very wealthy landholder from New South Wales, Lachlan Macalister, who had sent people down, including Angus McMillan, to take up large tracts of land and they were managing sending stock down to Tasmania to feed the population down there, even at that point, and I think there have been different incidents and then after Ronald's murder a group of settlers came together and came upon a large group of Brataualung People camped at the waterhole at Warrigal Creek creek. This major bend in the creek is clearly an obvious spot people would have gathered and between 60 up to 150 or more people were killed.

MR GOODWIN: And if we go to the map on page 3, which is 0062, we can see it's faint but my understanding is the red circled No.1 towards the middle top of the page -

MS BALDERSTONE: Yes.

MR GOODWIN: - is where it is understood the massacre occurred?

MS BALDERSTONE: That's correct. And then Peter Gardner, who is a historian from Bairnsdale, has researched and written this for 50 years, at least, (inaudible) but his work sort of infers that the initial site was at the main bend in the creek where a big (inaudible) possibly because they had heard there was going to be retribution for the earlier murder. But then his theory is that then there were people camped, which would only have been 2, 3km away down at the mouth at the creek at No.2 where it flows into Jack Smith Lake, which, in that photo, is a large dry lake area that frequently is rich with bird life and as a local shallow wet land area closer to the Ninety Mile Beach. And then the suggestion was that there were other attacks at Gum Creek at No.3 and down at Woodside Beach, No.4. It wouldn't have taken people that long for people on horseback to move through that country.

MR GOODWIN: And the Commissioners received evidence through the Colonial Frontier Massacre Project at the University of Newcastle, otherwise known as the Massacre Mapping Exercise, and they have included an entry regarding the Warrigal Creek Massacre, and based on a number of historical records, and stated that there was a creation of a group called the Highland Brigade made up of about 20 people. Is that your understanding? Yes. And those people, in the words of Peter Gardner, went on a rampage through the district possibly over five days and, as you mentioned, massacring a number of Gunaikurnai people at four different locations with, like you said, around 60 or more at the first site and then upwards of 150 in total. Is that your understanding?

MS BALDERSTONE: That's my understanding and, clearly, I base my knowledge on people like Peter and other historians. Yes.

MR GOODWIN: And Peter, himself, based his knowledge on evidence such as Angus McMillan's own discussions about the events with George Robinson, the first protector of Aboriginal people. Aborigines in Victoria. In terms of an Angus McMillan, himself, the historical evidence suggests that he, being one of the first Europeans who settled in Gippsland, helped establish and coordinate the Highland Brigade. What do you know of Angus McMillan?

MS BALDERSTONE: He clearly was - he did - was supposedly the first white man to reach Port Albert coming over land from the Monaro. He worked for Lachlan Macalister and there is a lot written about him. He was an industrious Scott that came - and I know Don Watson has written powerfully about the number of Scots who had come to Gippsland at that time and other places who had been chased off their own land in Scotland, with the clearances, and then repeated the story in Australia, ironically. Angus McMillan later went on to become the protector of Aborigines in Victoria and had a pretty mixed career when you follow it through. And clearly, over time, his name has certainly been associated with the Warrigal Creek Massacre and others in Gippsland. There is perhaps stronger evidence that he was at other massacres.

We will never know if he 100% was at Warrigal Creek but there probably only 100 or so white settlers in that region at that time. So clearly if he wasn't there he would

have known about it, as would most of the settlers. And I'm very conscious I use the word "settlers" and I'm referring to European settlers in that term.

MR GOODWIN: It is a relatively astounding fact that he openly discussing some of these events with the first protector of Aborigines, then becomes the protector of Aborigines himself. If I can then go to what's page 9 of your submission, which is 0068. This, Elizabeth, is, just for your benefit, the page after the photos. It is in the third paragraph. Would you mind reading out the third paragraph of your submission?

MS BALDERSTONE: I have, over the years, felt a growing awareness of the responsibility and gravity of caring for the massacre site in the gentlest and quietest way possible, and simultaneously, I am committed to ensuring that the truth of the massacre is told and understood more widely by Gippslanders initially, and by the Victorian and wider Australian community at large. Despite persistent advocacy for the truth of the massacre to be known and understood, it has only felt as though people really wanted to listen in more recent years.

MR GOODWIN: Thank you. (Audio lost) how do you deal with that sense of responsibility for the Warrigal Creek Massacre site.

MS BALDERSTONE: The burden, I guess, for us, as a family and for me living there to know we are caring for this site and how to do it as well as we can, I guess our approach has been to sort of - it's now totally fenced off. One part of it. I mean, the area - in fact, as I write, spreads into where our sheds and homes are. We have probably learnt to sort of - well, rightly or wrongly, sort of think of it as a more compact area in one sense but we know it is right across our land. Sorry, what was your -

MR GOODWIN: Just how you deal with that sense of responsibility for the site.

MS BALDERSTONE: Look, every day I look over to the site, hope it is feeling peaceful. The weather changes the last week. We have all seen that anger in the weather and you feel that for the site. Then there is many days it is beautiful, it is peaceful, there is wonderful bird life and I hope our role is to just care for it gently and quietly and be led by First Nation people on how to - the Traditional Owners on how to look after it in any other way. We have, over the years, connected and reached out to many Gunaikurnai people in that way and I know they are supportive of what we are doing but we would always be led to how to do it differently.

MR GOODWIN: And I want to ask you some questions about some of the relationships you have formed in relation to the Gunaikurnai people soon. You mentioned, in your submission that you have just read out, that it has only felt in that people have wanted to listen more in recent years. Why do you think people are more receptive to listening to the truth of these stories in recent years?

MS BALDERSTONE: I think that's just been the shift in the whole Australian population, or slowly, very, very slowly. And truth-telling is so important to us but it didn't really - up until the '80s and '90s, it was still very much pushed aside, no-one wanted to go there. And we felt that in our sort of microcosm of Warrigal Creek and its story that you could see it across the population. Things like the Redfern Speech, there have been powerful moments in Australian's history that have been turning points. There have been wonderful musicians and poets that have been led by First Nations people. We find it hard. I can't imagine - I can only imagine what it must feel like for our Traditional Owners. But I do think my feeling is that it has shifted, thankfully. Slowly.

MR GOODWIN: And you have been part of that shift in a variety of ways through your work over the years, including, as your submission highlights, in 2006 you were actively involved in forming the Yarram Yarram Cultural Group. Why was that group established?

MS BALDERSTONE: It was originally a group of people I connected with and knew around the district and we would often talk about this need for more truth-telling and connecting with Gunaikurnai Traditional Owners, learning about culture and pre-European settlement, and then, around that time, the Wulgunggo Healing Place, part of the Department of Justice, was being set up near Yarram at the old Won Wron prison and there was a really uncomfortable resistance to it in part of the community. So I guess, as a group, we thought we wanted to sort of counteract that and be a more positive force. At that time, even - and ever since then, NAIDOC Day has been a huge thing in Yarram, and there has been great connections between local clubs, football clubs, and the Wulgunggo Centre but that was the trigger early on.

MR GOODWIN: And what's its main purpose today?

MS BALDERSTONE: It is a very low key informal group and we are all getting older. 20 years on. And more recently - we do connect - we used to connect more regularly. Now, when things come up, or someone wants to visit Warrigal Creek, often others will come and join me in talking with people who are showing an interest in the history and the story. There is now a much stronger group called the Wellington Reconciliation Group based out of Sale which has grown since the Voice campaign as well, but also when we had the campaign to remove or alter the McMillan cairns, which, right through Gippsland, that the Wellington Shire - there was a motion to remove them. So some of these events have sort of strengthened feeling locally but our cultural group, there are still very important supports.

MR GOODWIN: While you have mentioned some of that advocacy around name changes associated with Angus McMillan, your submission mentions that the cultural group was part of the successful campaign to change the name of the Federal Electorate that was named after Angus McMillan but not successful in terms of removing some of those cairns. Can you just describe that - the importance of why there was advocacy done on those issues?

MS BALDERSTONE: The changing of the name of the electorate of McMillan, which we are not actually Sale, Yarram is not part of, but there was support locally of us toward that and a lot of us put letters or submissions in there because of the obvious connections of McMillan with the early history of Gippsland and that was the (audio lost) recognised that people sort of made that push and, eventually, were successful or semi. Certainly, with the removal of the name McMillan.

MR GOODWIN: Elizabeth, I might just get you to move your microphone a bit closer to you.

MS BALDERSTONE: Sorry. Yes. Is that better?

MR GOODWIN: Yes.

MS BALDERSTONE: In 2020, there was a motion, as I said, to the Wellington Shire, for the removal of the cairns. There is about 20 or 30 cairns that follow McMillan's path through Gippsland and they wanted to remove the ones on the Wellington Shire - in the Wellington Shire. There was a lot of discussion locally in the media on this and it looked like the motion might get up – but at the final vote, it lost. It was all online, it was during COVID and that was upsetting and it is still ongoing, that campaign. But - and I think in time, at least, there will be truth-telling plaques. But Gippsland is a conservative community.

MR GOODWIN: Why do you think there is that resistance amongst the community to removing such memorialisations?

MS BALDERSTONE: There is a strong feeling that European settlement history is what the focus has been. A lot of families, individuals, have strong connections with those stories and are not comfortable with them being questioned or altered in any way or challenged and just a resistance to that move to truth-telling, I think, and it's a slow process.

COMMISSIONER LOVETT: How does that make you feel when you say that given your growth as a person and knowledge and about the massacre site about things that happened. These are facts. When these things happen or you continually get pushed back from society, or living in a conservative area, how does - or hearing conservative views all the time, how does that sit with you and feel?

MS BALDERSTONE: It is hard and I have to navigate it sometimes. I'm part of the farming community there and I understand other people see things very differently. I'm not shy to speak up and my views are known but I am probably guilty of not waving - you know, not pushing it all the time. I think people respect that I feel differently, as do others. I wrote to the local Gippsland Times after that vote and I invited the counsellors to come and sit quietly by the creek and reflect on that vote and what had happened and I was also really conscious that (inaudible), who had come to speak on behalf of Gunaikurnai that night, if they felt so shattered - if I felt so shattered by that vote, how did they feel driving back to Bairnsdale and I try and

say that. I mean, I think it's hopefully a generational thing too and I do know that some of the younger members of families that have been pretty conservative on all this, there is a shift, but it's going to take time.

COMMISSIONER LOVETT: With the invitation to come and sit at the site and be engaged in it and feel it, how many of them took that opportunity up?

MS BALDERSTONE: A couple did. And maybe with COVID and things at the time I probably should have pushed it further. But certainly a couple were happy to and a couple have visited over time. So, yep.

MR GOODWIN: You have mentioned a number of times through your journey of learning more about Warrigal Creek and the Traditional Owners of that place that you formed a number of significant relationships with Gunaikurnai Traditional Owners and your submission also goes through that, particularly people like can Uncle Albert Mullet, Uncle Russell Mullet, Aunty Marjorie Thorpe, a number of Thorpes, a number of the Thorpes and Youngs and Patons. How important are those relationships to you?

MS BALDERSTONE: They have been incredibly important for me to have that chance to connect and break down that bridge that often seems to be between non-Indigenous and Indigenous Australians. And I guess early on it was the late Uncle Albert Mullet was fantastic to me. He - we became mates, I guess, and he would call in occasionally when he was driving through to the Prom, or whatever, and when we met with the instructing committee for the Gunaikurnai people, a few of us went down to a meeting - and that would be in about 2006 or '07. He - I remember him saying he felt this was the first time that, you know, a mob of white fellas had come to talk and talk openly. He sort of, I think, sensed my keenness and willingness to connect and get these things talked about and recognised. And, yes, I will be eternally grateful to that friendship. And, likewise, Uncle Russell Mullet I met many years ago when my girls were little. He visited with my father in law and he is a great friend and strength now.

MR GOODWIN: What are some of the key things you have learnt about the area and, particularly, about the Warrigal Creek Massacre site from those Traditional Owners.

MS BALDERSTONE: I'm very respectful that, for some, it is a really difficult place or they would prefer not to visit and I would never question that. And the same for non-Indigenous Australians. I'm sure it's a very powerful place. I think both Uncle Albert and Uncle Russell and others like Richard Young, they expressed a gratefulness that we are looking after it gently and quietly and protecting the site and willing to invite people there and to talk about it. So I'm sort of grateful for that.

MR GOODWIN: You mentioned in your submission that you attended the consent determination where the Native Title of the Gunaikurnai People was formally recognised. You write in your submission that it was an unforgettable day and a true

privilege to be present. I have a suspicion that someone else might have been there and is here today. But the relationship between property owners, in a western sense, particularly farmers and Traditional Owners, has not always been a happy one. What do you think makes your relationship different?

MS BALDERSTONE: Well, I'm still very aware, at the end of the day, I'm still a property owner and living on unceded land and farming unceded land but I also sense we have got to meet together on some of it and that there is a mutual respect and I have been lucky to build that. For me, it's an obvious thing to be open and to reach out and navigate the way forward, as we all try and do in Australia, I guess, and really that day at Stratford in a huge marquee at the Knob Reserve is unforgettable to me. It was a very powerful day and it was a huge privilege to be asked along and be a witness to it, too.

MR GOODWIN: An important theme of your submission is about educating the general public about the site and, more generally, about the history of interactions between First Nations and European settlers. In particular, in regards to the site, you have mentioned the work of authors, such as Peter Gardner, who we have discussed, and Don Watson, all the way up until the recent creation of your entry on the massacre by Andrew Dodd, Lisa Gye and students from Swinburne University. Why are these efforts important to you?

MS BALDERSTONE: Well, each of them from that - you know, the story gets out further and, you know, Don's book, you know, which I wish more people could read that, it is still a fantastic book written in 1984. The documentary was like a gift to us because they wanted to tell the truth of that story and in a format that could be seen by other - by a much wider audience and, I guess, we were sort of battling away in our little circle but we needed those skills and that network and that expertise to take it out further. So that was a really strong moment and the film was shown in a number of communities and places and is still available.

MR GOODWIN: And you have mentioned that at times over the decades the local Yarram Secondary College has had teachers who you have said are brave enough to teach the truth of local history and even conducted excursions to the site and that you hope going forward that truth-telling becomes part of the National Curriculum. What would you like to be seeing to be done more to educate people about the Warrigal Creek Massacre site itself but more generally about that history?

MS BALDERSTONE: That, to me, is one of the big huge opportunities and answers to sort of change our curriculum and have that settlement of stories that go with it. I think, on a local basis in Gippsland, having examples for students to study, photograph, paint, is a really important way of teaching that stays with them and it's been a while since anyone from Yarram Secondary College has brought a group out but I know often I will meet people in their 30s and 40s now who remember that learning and those visits and that really strikes me as how symbolic that was for them and I know the commission is pushing greatly and I think it is changing within curriculum.

COMMISIONER WALTER: With the curriculum, so you're saying not many have come out lately, so it's really dependent on individual teachers?

MS BALDERSTONE: Yes, exactly.

COMMISSIONER WALTER: So there's nothing within the education system or the school that actually goes there, it just relies on individual people motivated and then do something?

MS BALDERSTONE: I think so. The recent was about from a person who had grown up in the district and knew the story and bringing a group out from Sale. It depends on that. It is not actually written in the curriculum, yet I suppose you are saying.

COMMISSIONER WALTER: In 2024 it still relies rather than having it part of the (audio lost).

MS BALDERSTONE: Yes. You are correct. I think, through the documentary, when that was screened locally - in fact, I think the first screening, we chose the sort of venue, we thought we would have enough people there, we had to do two screenings and then, subsequently, we have had really large screenings in places like Yarram and the schools have been involved with that too. I know Lisa and Andrew feel it is a tough documentary and I still find it tough to watch, that it should be viewed in a supported way, watched not alone on the couch but within schools. That's a really good tool, I'm sure.

MR GOODWIN: In terms of some of those education around truth-telling, your submission also talks about renaming of sites and renaming of locations and even you have done some research and discussed with Traditional Owners even renaming of certain parts of your own property. Why is that particularly important to you?

MS BALDERSTONE: I think using traditional names is really important and it is a wonderful seeing it happening across Victoria in different ways and Australia and the ABC now. I mean, I think we all need to change our language and interpretation and Warrigal Creek is - while it hasn't - no-one ever quite knows why but it is not even correctly named on the South Gippsland Highway. It is called Four Mile Creek which is where - it was like they didn't really want to recognise it then but with our local groups we are hoping to change that and use the traditional name as well. I think throughout Gippsland there is huge opportunity within that and I know local shires, like Wellington Shire, itself, they are trying but it is very slow.

MR GOODWIN: I want to talk about protection of the site itself and some of your evidence in your submission in regards to the actual site. If we can go to the final page of the submission and this is first a photo of the main massacre site from the homestead in 1980. That's right.

MS BALDERSTONE: That's correct, yes.

MR GOODWIN: You can see quite a striking difference if you look at the same view in 2024, in the next photo, and so could you just explain to the Commissioners whose happened to change the nature of the site in that time and why that's being done?

MS BALDERSTONE: So the site has been fenced off. There is stock in an area close to the creek bed. It wasn't part of the big paddock but it was grazed on both side of the creek. On the northern side it belongs to neighbours of ours who knows about my submission, very supportive too. But over in the late '80s, early '90s, we fenced that area off so it's just naturally regenerated, basically, and there is only native wildlife, native sheep, cattle, horses and it's peaceful, I guess, in that respect. We don't even actually go in there a lot unless there is people wanting to visit or doing some sort of weed management and necessary protection of the site.

COMMISSIONER HUNTER: Can I just ask: does that border out to the other part of the property?

MS BALDERSTONE: Yes. Our side of the creek is to the south and the northern side of the creek belongs to our neighbours.

COMMISSIONER HUNTER: You just said that your neighbours support?

MS BALDERSTONE: Yes. They've fenced and protected the site and have a full understanding of it maybe in a - they have seen the submission and are supportive of what - they know I'm here today, yep, and they have protected it. They don't let any - they respect that, yes.

COMMISSIONER LOVETT: Can I ask, how did you approach that conversation with them around help to go protect the area?

MS BALDERSTONE: I guess they have - we have done some of our work and we were very involved with Landcare and fencing all our creek areas and they witnessed that and have come on board through Landcare, too, in protecting those sites, yes.

COMMISSIONER LOVETT: You had some conversation with them as well about knowledge of the area?

MS BALDERSTONE: Yes. Certainly. And they came along when the documentary premiered in Gippsland. So they are certainly very aware of the significance of the site, to them, yes. They - we sort of own - there are farms either side of theirs. They have one area that comes straight down on to them, the bend in the creek.

COMMISSIONER LOVETT: I'm just listening to so far. The relationship that you have built with the Traditional Owners, particularly mob from Gunaikurnai, has been quite a positive thing and I think, you know, a lot of the time we hear evidence

before the commission and, as Aboriginal people living here in Victoria, that, you know, particularly around sacred objects on farms and stuff like that, people are - particularly farmers are unwilling to come forward because they are worried about different things happening and so forth. But your experience seems to be quite different around a positive experience with Traditional Owners?

MS BALDERSTONE: It certainly is. And when we have had occasional field days in the past, part of land kill farming projects, probably only one that Auntie Marjorie Thorpe come and did a welcome to the farmers there. That probably doesn't happen a lot but meant a lot to me, she did. We have had other days when Uncle Lloyd has come and we do have a collection of axes and stones that have been picked up over many years and they are kept and they are still in the homestead and then Gunaikurnai know they are there and are happy they are kept sort of on country for now. But we are very much led on that too.

COMMISSIONER LOVETT: I suppose what I'm trying to see here is there is nothing to worry about.

MS BALDERSTONE: No. And that's probably partly why one of my hopes from today is that other landholders speak, let go that angst of worrying that land will be resumed or impacts on what they are wanting to do. I mean, it's a shared journey and I hope that others will see that.

MR GOODWIN: And to build on Commissioner Lovett's questions, you state expressly in your submission that whatever happens at the site or at sites of tragedy like Warrigal Creek it must be determined and led by Traditional Owners but at the same time you strongly believe that non-Aboriginal Australians need to learn and reflect on those tragedies and wrongs of the history. Why is it important for you that any activity you do in relation to the site be led by the Traditional Owners?

MS BALDERSTONE: Well, I feel like it's such a sacred special site of significance that I - that's important it be led by the traditional owners. I don't think - I don't want to feel that particularly that we as a family would rather they led any activities, management plans, that we worked on it together. It's terribly important to me.

MR GOODWIN: And you have explored some options - and you have discussed this in your submission - about exploring handing land back to Traditional Owners, joint management arrangements for particular sites. Can you just tell the Commissioners a bit more about your hopes for the future in that regard?

MS BALDERSTONE: Yes. We have looked deeply at handing back this main area here and it is tricky because of access and its proximity. The fence is there in the bottom of the photo but it clearly spreads out a lot further and that's a site where the homestead was built, the woolshed, all the - a lot of infrastructure of the property is in that area. So there is a practical complexity there and I have talked with Uncle Russell especially about it a lot lately and maybe a Joint Management Agreement that we can be led and united on is a sort of easy option for now anyway. But I feel -

and I know the mob share this - we want to make sure it is permanently protected and looked after and that's the most important things to us. There's things like cultural covenants. New South Wales have Aboriginal places that are named on non-Traditional Owner country. So we are really exploring that.

Opposite to that there is the area sort of at the mouth of the creek, where Warrigal Creek splits and flows into Jack Smith Lake, and it's often a dry - they are not big creek entrances or anything but there is another, which was No.2 on that original map, and there is an area around that, we would, as a family, be very happy to hand back to Traditional Ownership if that was a requested and wanted process.

COMMISSIONER HUNTER: Can I just ask when those properties were handed back and we are coming to truth-telling relating to massacre sites, and I'm wondering about ancestral remains on any of those sites and what has happened if you have come across those.

MS BALDERSTONE: Not in my time and we haven't. Occasionally, people say why can't we investigate, do a - you know, there has been discussion of really solving the mystery once and for all. I mean, that would be totally up to Traditional Owners. Given it is such a sacred - it's a site, I guess, my own - I understand that no-one would want to disturb it be and so that's what's important to us, that it is protected and undisturbed.

COMMISSIONER HUNTER: Yes, it does. It's just a question of - we've got these sites and little lines and massacre maps. It does talk about remains have been found at each of these sites on several occasions. I was just wondering how, in your time -

MS BALDERSTONE: Yes. Going back further. I read that. I'm not 100% sure of the detail. I probably should be. Certainly down near the mouth of the creek - and I'm sure if there was investigation that could happen but - yes.

COMMISSIONER WALTER: Your submission also talks about clean-ups that have happened along the way, including just before George (inaudible) came through so that those who committed these massacres were well aware that they needed to remove evidence.

MS BALDERSTONE: Yes. And they supposedly did that and took the evidence and it is buried in a sort of low hill on Jack Smith Lake or Red Hill. That's fenced and revegetated and protected, I guess, in lots of ways. But, you know, if more people start to come more - anyway, it is a risk, isn't it? It's not a - it's a pretty open access area.

COMMISSIONER HUNTER: Just with yourself having those relationships that Commissioner Lovett was talking about, you would have a way and means of contacting the Traditional Owners about if you did come across?

MS BALDERSTONE: Yes. We certainly would. And, look, when - during - you know, we've had some pretty, pretty significant droughts. The waterhole dropped significantly and there has certainly been stones accessed but we have left them in place. Yes. We wouldn't disturb anything now.

COMMISSIONER LOVETT: The exploration about joint management or transferring some of the land back, noting the complexities you have spoken about, it is really derived from your own accord and not from pressure from Traditional Owners?

MS BALDERSTONE: No. No pressure at all to anyone. It is a token really. I'm the first to admit that. But if it was wanted, we would be very keen to pursue that. And in the meantime, we would really like to process this secure joint management so it is on title or whatever is needed, I think, is a real priority for us going forward, yes. Especially of this sort of main site but all the sites, yes. At the moment the mouth, where the creeks sort of flow into Jack Smith Lake, that's all part of a covenanted area and outside of grazing areas. So waterways are fenced and protected.

MR GOODWIN: Just a final series of questions and I say that to foreshadow in case the Commissioners have any questions of their own and, importantly, to maintain my gold star for finishing on time, Elizabeth, that's extremely important in this commission. You state in your submission that you have had a long-held belief that we all have a responsibility to investigate, confront and share our truths as non-Indigenous Australians and that you hope you sharing your story will encourage other non-Aboriginal Victorians to come forward and share their stories. Why is that important to you?

MS BALDERSTONE: I think, as I have been living in such a part of our journey, that - and I don't - unless Australia, as a whole, confronts this past and shares it and teaches and tries to understand what happened in those early years, we are never going to go forward as a nation in partnership with our First Nations people. So it's incredibly important. We have seen it overseas. You've referred to Desmond Tutu. I mean, across the world, not telling the truth is never going to get any of us anywhere and it is going to sort of halt things and stall things. To me, I just hope maybe, even if it is just only one or two others who are willing to start sharing their stories, that that can be some healing and some recognition in enabling us to go forward.

MR GOODWIN: You mentioned this at the start of your evidence, and also in your submission, that since a responsibility you feel also is a heavy burden sometimes, do you mind expanding on why that is?

MS BALDERSTONE: I think - and I think most would agree - it is a heavy burden to care for this site in the best way we can and hope we are doing it well enough and open always to the true owners of those sites and the people that have, you know, ancestors buried there in tragic circumstances and it's such a grim part of Australia's history but it is a burden to know whether one is looking after it and sometimes it does feel pretty lonely and we would - you know, I have had enormous support but I

would hate - we would hate to ever know that something could disturb or challenge all that, yes, and I do - and I think, you know, I have written, too, that, as a nation, being really honest about our whole development in those early decades is vital.

MR GOODWIN: Notwithstanding that heavy burden, your submission ends on a positive note whereby you state that you feel the sands are beginning to shift and that you regularly remind yourself to listen deeply and that we are on a shared journey. What would you say to non-Aboriginal Victorians who might be watching or reading a news article about this evidence, and other evidence that we will hear today, what would you say to them to encourage them to explore their family histories and the history of the land they are connected to, as confronting it as it might be, despite that heavy burden that you have talked about.

MS BALDERSTONE: I think we have all got a duty to do it as Victorians and Australians, to look at where we live, investigate the story of European colonisation, think about what it meant for the people that were there, and what happened and what's happened to the landscape, and acknowledge that story and then also the benefits so many of us have had because of that tragic beginning to Australia and I just hope as a nation we can share those benefits.

CHAIR: Any questions?

COMMISSIONER NORTH: I would just like to ask one thing. Thank you so much for your evidence. The massacre is not that long ago and I wondered whether you have ever reflected on the fact that there are Gunaikurnai people around now who will trace their ancestry to the people that were murdered on your place.

MS BALDERSTONE: I do. We do often. I think we have had certainly a couple of people who have visited, who do have a connection, but not a lot, and I'm really mindful of it. It's not - you know, when I went there in '74 it was only 130 years earlier. It is a very short time period. So I do feel very conscious of that. And in that first 10 years or so of settlement, the population went 1,000-plus in our area to less than 100, I think. It's tragic. And they are the figures that we need to acknowledge and - but that's so true. I do think of that. And I know there is others who have told me they would find it hard to go there and I totally respect that too.

COMMISSIONER LOVETT: Just in the opening statement I just want to read a sentence to you and then ask a question. It says here, "I am sure the tragedy and trajectory of the frontier wars and ongoing dispossession overlay so much of the challenges and equities faced by First Nations people every day". Do you want to kind of elaborate on - a lot of people will go why are Aboriginal people overrepresented in the criminal justice system, in the child protection system, and so forth, and many other negative things about Aboriginal people. You have made the parallel between early happenings, to use the words lightly, given the content, around the traumatic things that happened to our people too, why are so many of our people are in the situation they are in today. Can you elaborate any further on that?

MS BALDERSTONE: I think it's - if the truth of your past is not understood and acknowledged or interpreted totally differently when Aboriginal people have had to grow up being told the land wasn't theirs, they didn't - you know, the way they lived for those tens of thousands of years right throughout Australia was really just pushed aside and buried for so long and I cannot imagine, as an individual, to have a chunk of your past being obliterated or denied and that affects anyone's sort of wellbeing, positiveness about life, about life in their future and future for their family if you can't have your whole story recognised honestly and truthfully. Has that answered it enough? I'm not sure.

COMMISSIONER LOVETT: That's okay. That's your evidence here. And you had your family here today. You have your family here today. Our little one has been sharing some, I guess, yeah, yeah - I guess where I'm trying to get to with this is that I feel that the ancestors have sent a message through to the little one today about crying for country. Crying for country around we are talking about really deep traumatic things here and I think that, as I said, the ancestors are sending a message through to your grandchild to sort of express here today in their own words about crying for country and just making sure that we are keeping the stories at the forefront of people's mind. This is facts we are dealing with here.

MS BALDERSTONE: Yes.

COMMISSIONER LOVETT: This is not just some anecdotal things that you have come here to share today, some feelings. It is important that we remain all Victorians and all Australians that we are documenting the true history of what happened to our people here.

MS BALDERSTONE: Yes.

COMMISSIONER LOVETT: Here in Victoria as well. I just want to thank you for showing leadership as well in the community and in society. It is tough to be at the forefront around having conversations particularly around anything to do with our people, whether it be massacre sites, or whether it be just trying to actually write the wrongs of the past as well and I know that a lot of trauma comes to people who also put their hands up or grab the fence and look above. So I just appreciate you coming here today and sharing the truth of, you know, what the site is and what it was and what it continues to be and also proactively working with Traditional Owners, particularly Gunaikurnai, on what the next steps might be, noting there are some complexities involved in that as well. Thank you.

MS BALDERSTONE: Thank you. Thank you.

CHAIR: I would also like to go thank you very much, Elizabeth. I didn't know what to expect today. And it is one thing to read the written word, it is just cold hard facts, but to hear you speak about changing attitudes, the manner and dignity with which you have spoken to us and the respect you show for our people and TOs is very important. That can only be for the good. And, of course, they're benefits for all

around if we can have harmonious communications. Our wellbeing and mental health is the better for it.

I know you make a comment about the Dawn Service on Australia Day and a lack of recognition of frontier wars. I mean, I think - and the mention of, you know, crying for country. These are things that we feel deeply and you get triggered sometimes by a place or a conversation or a person who is associated with something like that and I really appreciate your insights and your understanding to some extent about how we can feel because, clearly, you treasure what you have got for the future. Not just for now but for the future. And so I thank you very much for your contribution today and I hope other people are listening and take note because it's a big story but it's our story. Thank you.

MS BALDERSTONE: Thank you. And I would encourage any Victorian to go to a Dawn Service on Australia Day, hopefully on a different date, but the power of what is growing in those ways is enormous.

CHAIR: Thank you so much. Shall we -

MR GOODWIN: Adjourn until 11.45.

CHAIR: 11.45. Thank you, counsel.

COMMISSIONER NORTH: Mr Goodwin, I don't know if you know, there's a new rule and penalty on finishing early now.

MR GOODWIN: I will suffer the penalty.

CHAIR: Thank you. 11.45. Yes. Thank you.

<THE HEARING ADJOURNED 11.26 AM

<THE HEARING RESUMED AT 11.49 AM

MS FITZGERALD: Thank you, Chair. If the Commissioner pleases, I now call today's second witness, Peter Sharp. Mr Sharp, will you state your name for the Commissioners?

MR SHARP: My name is Peter Sharp.

MS FITZGERALD: And do you undertake to give truthful evidence to the Yoorrook Justice Commission today?

MR SHARP: I certainly do. To the best of my knowledge, it is the truth but it is based on the evidence as I found it, if other evidence is brought to challenge it, it may be may - it may - yes. I will do my best based on the evidence I have found.

MS FITZGERALD: And you caveat what you say in that way because you are not a historian. The evidence you are giving today is your personal reflections based on your own research; is that right?

MR SHARP: Yes. Yes.

MS FITZGERALD: You have also prepared a statement for the commission. To the best of your knowledge, are the contents of that statement true and correct?

MR SHARP: To the best of my knowledge, yes.

MS FITZGERALD: That statement will be tendered as part of your evidence, Mr Sharp. You have prepared an opening statement for the Commissioners. Would you like to read that statement now?

MR SHARP: Yes, thank you. Thank you, Commissioner Bourke. Your words at the Lake Bolac Festival this year encouraged me to make this submission. Thank you, Commissioner North, for your words this morning. I think they were very pertinent and seeing you mention Bishop Desmond Tutu, he has been a great inspiration to me, and I did once have the privilege of sitting actually closer to him than I am to you now because I was late arriving at a church in Geelong and the only space left was literally on the floor at his feet when he was in the pulpit. Thank you, Commissioner Hunter, for your Welcome to Country. I have lived and worked for most of my life on the lands of the Kulin Nation, in particular, Wurundjeri, Bunurong and Wadawarrung land. I acknowledge that these lands have been and are still cared for since time immemorial by the Kulin. Were taken from them by force and never ceded. I pay my respect to their Elders, past, present and future, and to the Elders of all First Nations throughout this continent and its islands, and I pay my respect, in particular, to an Elder from Wadawarrung country, where I live, Melinda Kennedy, who is with us today.

As I grew into adulthood on these lands, I slowly became aware of the lies and cover-ups, at worst, and pretences and paternalism, at best, that pervaded the culture. I had been brought - the culture I had been brought into. But beside the growing awareness was a sense of not knowing what action to take without becoming a further part of the privilege to paternalism. I always believed or guessed that dispossession of First Peoples after the invasion must have involved massacres, even though it was denied.

It came as a shock to learn that the attempted elimination continued after frontier violence diminished and I say "diminished" because it really probably hasn't ended. It was a greater shock when I stumbled on the evidence that indicated that a member of my own family had enabled the attempted elimination to be put into law. The frontier violence can be claimed to be outside the law but what I saw was something that wasn't just legal and within the law, it was the law. I knew then that there was something I could do and that I had no option but to do it and that was to tell the truth.

I wish to present that evidence today and tell what I believe to be the truth. In the course of doing so, I will, in quoting sources and in discussion, use terms in the racist language of that of the time. I do not intend any offence through use of this language but consider its use inevitable and important in the accurate presentation of the source material.

To all those viewing, who, themselves, or whose families have been and still are being impacted by the introduction of laws and policies in which a member of my family played such a significant role, I say that I am personally profoundly sorry.

MS FITZGERALD: Mr Sharp, you are a descendant of Australia's second Prime Minister, Alfred Deakin?

MR SHARP: Yes. But please call me Peter.

MS FITZGERALD: Peter, could you explain that connection to us?

MR SHARP: Alfred Deakin was my mother's maternal grandfather. So my mother's mother's father.

MS FITZGERALD: Can you tell us what you were told within your family about Deakin as a Prime Minister?

MR SHARP: As a Prime Minister, not very much. That was - I didn't really know much. It wasn't talked much about his actual politics in my growing up but, as I have written in my statement, my grandmother gave me the 1965 biography by John La Nauze, for my - it must have been my 18th or 21st birthday. I didn't race immediately to read it. It's pretty heavy-going. I did, I think, in due course, when I was probably my mid-20s, slog my way through it and when I reopened it again in recent years, in doing the research I have done, I came across a page of handwritten notes that I had left in it where I noted, in highlighted - the only highlighted note in all the notes I took was that La Nauze says, something like - I'm paraphrasing - "viewed in the strictest terms, Deakin would have to be described as a British racist."

So I did have a - that obviously disturbed me slightly then but it was nothing further than that. In those two volumes - it's a two-volume biography and in the entire are two volumes the words "Aborigine" or "Aboriginal" or any other reference to First Nations people does not occur.

MS FITZGERALD: And just going back to growing up, you had an awareness that Alfred Deakin was a Prime Minister of Australia?

MR SHARP: Yes, yes.

MS FITZGERALD: And it sounds as though not much about his politics was discussed within the family. What were you told within your family about Deakin as a man?

MR SHARP: Well, the first mention of him was by my grandmother and she was describing him as her father and in very fond terms. She said he was a wonderful man, wonderful father, story-teller, playful. She - I never heard her say anything but kind words about him.

MS FITZGERALD: And what have you subsequently learned through your own research about Deakin as a politician?

MR SHARP: Well, before I say about a politics, I did meet - there is another biographer of Deakin, Al Gabay, who did a PhD in the 1990s, published as - the published title is The Mystic Life of Alfred Deakin which tells a great deal about Deakin's inner thinking. It's based on all his notes, his papers in the National Library are said to be the largest single personal collection but they were never meant to be found. He developed early onset dementia and did not destroy them. And Al Gabay, when he was writing that biography in the 1990s, to me, "It's a great pity there is no-one else living outside the family" - well, anyone who had a personal memory of Deakin and I took him - I said, "I think there is", and I took him to meet a then very elderly woman who had been a school days friend of my grandmother's and her description of Deakin was, as an outsider, her first word were, "Oh, temperamental, my dear. Temperamental", and she described him throwing a glass of water in one of his daughter's faces because she was wearing lipstick to go down the street, which is a very, very different side - reveals a very, very different side to the description of Deakin that is most known, which is affable Alfred.

MS FITZGERALD: And after that engagement with the school friend of your grandmother's, what have you subsequently learnt through your own research about the Prime Minister, the ex - Alfred Deakin.

MR SHARP: The simplest way to put it is he was an extremely complex man. Extremely. And I think there will be many further examinations of his personality and what drove him. Now, one of the things that came out in Gabay's biography is his incredible belief in higher powers, spiritualism, and his own belief that he had been chosen for a divine destiny and even that he was prepared to sacrifice himself for this cause, which he said was his race, the ideal of a the Anglo-Saxon race to have exclusive occupation of this continent, and that he was prepared - in his writings, there is evidence that he says he was prepared to sacrifice himself for this cause and even if meant - now, most martyrs who sacrifice themselves for a cause think they might go to a higher place. He said - he wrote there is evidence that he says, "I'm prepared to go to a lower place for my cause." And there is other pieces in his writing which reveal that he, beneath this affable appearance, he was prepared to be absolutely ruthless, and especially if he could get away with it.

MS FITZGERALD: In your view, what were the practicable consequences of these spiritual beliefs in him having a divine destiny that was related to racial issues in Australia?

MR SHARP: I think that he was prepared to do whatever it takes to achieve whatever he believed was his mission.

MS FITZGERALD: And in terms of the research that you have done, what did he do to achieve that mission, in your view?

MR SHARP: I believe that he - and it's a very complex story. Because I believe that in his younger days he was - and I have written this in my submission - that he - at the age of about six, rather than going to school, he walked in the opposite direction and went and joined a group of - well, it is to be presumed Bunurong in what is now Fawkner Park but he saw them disappear. Now, as a six-year-old, that is a very formative - we believe that we see when we are that age and we believe what adults tell us and he was told the Aboriginal people are a dying race and I think that you have to credit him with a certain innocence in growing up in that that's what he was told and he was in this - there was nothing at that time in the, as he was growing up in the 1860s, there was really not another place on the planet like Melbourne with the wealth of the Gold Rushes and the buildings were just - it was - it was extraordinary.

You have to accept that he grew up with this vision before him that this land was going to be occupied solely by the invading race. Let's not beat around the bush. I think it was an invasion and the English Anglo-Saxon people that he felt were his cause don't have any qualms about talking about the Norman Conquest. They don't talk about the Norman settlers who arrived in England in 1066. They say the Norman Conquest and William the Conqueror. So let's talk about the invasion. But after he entered politics - and he entered at the age 22 - I think there is evidence that he was possibly Australia's first career politician because - and it was only possible by that time because prior to that politicians didn't receive salaries so they had to have independent means and so they were the wealthy elite that entered politics and that's really all he ever did in his - as far as his major occupation was - from the age 22 was as a politician.

Even in his - I say he entered politics in 1880 and I think that still the evidence is that, in 1882, that he - I think that he still believed - and there is a - he still believed that the numbers of Aboriginal people in Victoria were in decline. There is a letter from the Bored of Protection - the Board of Protection for the Aborigines in Victoria to the Chief Secretary of Victoria, which position Deakin later achieved, but in - I can't recall which - who was the Chief Secretary in 1879. There is a letter from the Board of Protection to the Chief Secretary saying, "It's with great regret that we - to report that the numbers of Aborigines in Victoria is rapidly declining", and there is a lot of - there was a flu epidemic in Victoria in 1881 which killed 10% of the entire population of Victoria and 20% of the Indigenous population. So the numbers were very much still in decline when he entered politics. But I think a time comes somewhere around 1882 or '83 where the reports are - and they would be both in the

reports from the Board of Protection and in - reported in the papers - that the numbers were now increasing, particularly of the mixed heritage population partly because they may have had more resistance to disease.

MS FITZGERALD: In the research you have done, it is indicated that Deakin had a role in some amendments that then redefined Aboriginality. Can you discuss those amendments?

MR SHARP: Well, yes. And there is a sort of - it was, to a certain extent, fortuitous that in - so the Board of Protection in 1884 made a - wrote a one-page request to the - here it is. That's from - this I found in the Public Records Office in North Melbourne. This is a one-page request from the Board of Protection requesting some amendments to the existing 1869 Act for the protection and management of Aborigines in Victoria and from 18 - they made this request of the then Chief Secretary, Graham Berry, and for two years, from 18 - from May 1884 to the day Graham Berry resigned from parliament in December 1885, he consistently - each time the Board of Protection wrote to him requesting, saying, "Have you done anything about this?" He wrote back to them saying, "Oh, yes, I have had a look at it", and then each time I think he just put it back in the drawer and he hadn't told a lie. He had had a look at it and he put it back in the drawer. And so for two years he did nothing. Except, during that time, he actually permanently - he actually Gazetted Colin Bourke to be a permanent reserve. An indication that he was really - which was against the Board of Protection's wishes.

So my inference - and this is my inference from the evidence - is that Berry had concerns about this - these requests - and we probably haven't got time to go into all the details of it - and then, after Berry resigned at the end of 1885, there was an election in March, 5 March 1886, in which - and several other ministers had resigned and so there was an election and, as a result of that election, Deakin, in a Coalition Government with Duncan Gillies, a Conservative, Deakin, a leader of the Liberals, Deakin became Chief Secretary and the importance of being Chief Secretary was that the Chief Secretary was ex officio chairman of the Board of Protection and with ministerial responsibility for Aboriginal policy and there was no other - it's important to recognise that the Board of Protection had no executive power. They were prominent citizens appointed by the Governor to be on this board. But all they could do was make evening requests like this. They could not pass legislation. Only the Chief Secretary could direct that legislation be drawn up and only the Chief Secretary could introduce it to parliament. Only parliament could pass it but only the Chief Secretary could direct that the legislation be - and direct it through the parliament.

MS FITZGERALD: So at this time what did Deakin do?

MR SHARP: Well, the outcome of the 1886 - of the amendment was - and in contrast to what - Berry's prevarication over two years, within - so the election was on 5 March, when Deakin was elected and took the role of Chief Secretary, by 29 March, by the evidence I found in the draft documents in the Public Records Office,

before the end of March, Deakin had prompted, directed his - the chief legal counsel, Edward Guinness, to begin the process of drafting the amendment to the Act.

This is the first - this is the first handwritten draft of the 1886 amendment, later to become known as the Half-Caste Act. It is drafted - the handwriting, I think, is in the handwriting of, John Aloysius Gerner, the parliamentary draftsman and then there is a series of drafts drawn up between March and May 1886 saying total contrast is a flurry of activity. Deakin has directed to get this through. And then, on 23 June 1886, he tabled this amendment and, in the Hansard, he tables it without making any comment on it.

MS FITZGERALD: Will you explain to the Commissioners, in its final form as passed, what that amendment did practically?

MR SHARP: The most important - the real crux of it was that it redefined those who were recognised as Aboriginal in the State of Victoria. The 1886 Act begins - it says, "All Aboriginal natives of Victoria and all Aboriginal half-castes shall be deemed Aboriginal." By the time the amendment was passed in - and this is a long story in between - but by the time it was passed, the amendment changed the Act to say that only Aboriginal natives of Victoria; that is, in the language at the time the full-bloods were deemed Aboriginal, anyone of mixed heritage could no longer claim Aboriginality and, in fact, were defined as half-castes. Not even Aboriginal half-castes. Half-castes. So what that meant - and this was the critical thing for Deakin, I think - was that, on the signing of that - when the Governor signed that legislation into law, it was possible to say that it wasn't immediate because there was a sort of lag period, an amnesty period, but within seven years it would be possible to say that the Aboriginal population of Victoria was half what it had been in 1886 and that it was going to continue to decline because it was true that the full-blood population, to use the language at the time, was diminishing.

That was crucial to Deakin's premise that the Aboriginal people were dying out and one-day it was going to be possible to say this is a - this continent is - and he later wrote this, that one-day - he wrote in 1905 - he wrote in 100 year's time, in all probability, there will not be a coloured skin or a trace of or a hint of colour in the population of Australia.

MS FITZGERALD: And so that difference in numbers, admittedly, it took place over perhaps seven years, would it be fair to say that they were essentially, through the law, the Aboriginal - a huge chunk of the Aboriginal community were essentially defined out of existence by the definitions in the law?

MR SHARP: Yes. Exactly. There is a lot of writing where people have written the treatment of Aboriginal people of mixed heritage was different and they claim that that's all the 1886 Act did. That's not what - it actually redefined them. It took away their Aboriginality and, of course, that meant that their treatment was different.

MS FITZGERALD: And will you just explain what you understand to be the difference in treatment, in particular, who was allowed to live on reserves and what it meant - what you have learnt it meant for families living on reserves and any other impacts you are aware of.

MR SHARP: Well, I think - I think those who - I think it's well-known what - and I think that's what all those who have been - all those families who were impacted by it have told that story pretty well. It was devastating because it was - there is so much more to tell here because it wasn't just that they were disallowed to stay on the reserves where their family ties could remain strong and kinship could be observed, preserved, language could be preserve. They were forced to disperse and the policy of removal of children was - came into being and it was - it was the beginning of the Stolen Generations.

Professor Richard Broome, who has been a witness at the commission, has written that he has actually said that the terms - the request from the Board of Protection in 1884 does not does not qualify under the 1948 United Nations definition of "genocide", this does not qualify as proposed - as genocide, whereas the bill that was passed in parliament at the end of 1886, having been directed by the Chief Secretary, Alfred Deakin, does qualify as leading as -

MS FITZGERALD: Genocidal - have the outcome of being -

MR SHARP: Because it satisfies the cultural - destruction of culture but also removal of children from one group - and I can't remember the term, I can't quote the actual terms of the definition - but removal of children from one cultural group to another by force and that's one of the crucial things. Is this - the request from the Board of Protections did not have enforcement in it. It was - it was - the actual wording is that the - that from 1 January 1885, all able-bodied half-castes now on the stations under the age of 35 years should be told to look out for employment or seek settlement elsewhere. So they were being told. They were being encouraged is the terms of this.

By the time the legislation passed, they were no longer - they were no longer even able-bodied half-castes, they were just half-castes and they were not eligible to be counted as Aborigines. And Aboriginal - sorry, the language of the time. By the time the legislation was passed, they were no longer Aboriginal and they were forced off the reserves. Not just encouraged. Forced. And that - that's the change - that's what Richard Broome identified, saying the force and the removal of children defines it as attempted genocide over the 1948 Act.

MS FITZGERALD: Before I go any further, I want to ask you another question about the board, but will you just explain for us what - the board has come up within your evidence, the Board of Protection, can be you explain what its role was?

MR SHARP: Well, the title is - the board was actually - the board was established under the 1869 Act. So it was brought in then and it was - and the title of the 1869

Act is an Act to provide for the protection and management - management - of the Aboriginal natives of Victoria and, arguably, in its beginnings, it did provide protection. I have read that present-day Elders saying that, "If it wasn't for the missions and the reserves, we would have been wiped out totally", and for a little while it did. But, look, it's a very complex story. I have got here an original copy of the 1877 Royal Commission into the - I will read the title page, "Appointed to inquire into the present condition of the Aborigines of this colony and to advise as to the best means of caring for and dealing with them in the future." It's a - I got this on a rare book site. It's an original copy and that's probably the last commission of this sort in Victoria.

MS FITZGERALD: When that document refers to the colony, is that Victoria?

MR SHARP: Yes, yes.

MS FITZGERALD: What year was that?

MR SHARP: 1877. And I think it's been - the evidence in it, I think, it's been very much overlooked and there is a bit of a reason for that. That it was probably published at the end of 1877 or - and it probably wasn't brought before parliament until early 1878 and January 1888, I can't remember the actual date, but it became known as Black Wednesday because supply was blocked and the entire Public Service was sacked. So it kind of took the headlines. And then the Kelly gang came on the scene in 1878, which kept the Royal Commission into the treatment of the Aborigines out of the headlines, and it kind of has never - I think it's - because it actually - everything in the - that was in the 1886 Act is in complete contradiction to the recommendations of the Royal Commission, but, I, guess it has to be said that nothing has changed as far as royal commissions are concerned.

MS FITZGERALD: In terms of adopting recommendations speedily?

MR SHARP: Yes.

MS FITZGERALD: I just wanted to take you back to some - before I before I ask you just to plain the Board of Protection, you make your point in your evidence earlier that what the Board of Protection asked for, and what came out in this legislation, that Deakin was responsible for having drafted, were two quite different things and is the point you are making - and, to date, there has been a lot of focus on the board's responsibility for those amendments, and are you suggesting that the board is not solely responsible for the contents - for asking for what ended up in that bill?

MR SHARP: Yes. I think the myth has always been that the 1886 Act was entirely - can entirely be attributed to the wishes of the Board of Protection. But, as I pointed out, the Board of Protection had no actual powers and it's been a very handy scapegoat because the Board of Protection are sort of - their names have been entirely forgotten and it's sort of anonymous and it's sort of - and that's sort of what -

I mean, that's kind of what began me on this whole - that's the question that was in my head before I stumbled on this, was we have always all known about the police or, as it came out, as the story came out - my first experience of it is in Archie Roach's song "Took the Children Away." That changed - sitting at his feet at Port Fairy, when I first heard him sing that song, I think, in 1889, really changed my whole thinking. Because - but he described the police and the welfare coming and taking him away. But the question in my head was always, "Hang on, the police and the welfare, they are the employees of the State who come and do the dirty work", and many of them - I think it's fair to say, did it - it hurt them doing it but they had to - they had to carry out the law. But who made the law? That was what was in my head. Where did this start? I didn't go into it in a sort of rigorous way. It was just in my head whenever I was reading I was thinking, "Where did this actually start?" And everything - and then as I read further, it came to look like - in fact, the very - the book - I read a book in - would have been in 2018, some of the Commissioners might know Mick Woiwoid's book - not Rebellion at Coranderrk, the Black Hats - Barak v the Black Hats. In that, Mick Woiwod writes, in December 1886, the government, under pressure from the Board of Protection, passed the notorious, the infamous 1886 Act, which became known as the Half-Caste Act. Even in 2017, he was - that was still the perception. It was all the Board of Protection and the government. Deakin's name. In fact, in his foreword to that book, Mick Woiwod counts - lists Deakin as being one of the supporters with Anne Bond, Efron Socks and others as being the supporters of the - of Coranderrk and the Indigenous population. And so he gets out of it completely. And then the very next book I read was - I was given this- the 2017 biography of - the most recent biography of Alfred Deakin in which Judith Brett writes in a chapter on - she has just described how Deakin got up and spoke for four hours to pass the Irrigation Act, which led to the establishment of Mildura, and she says then Deakin's other significant legislative initiative in 1886 was to sponsor, she says, the Aborigines Protection Act.

The moment I read that, and put all these other pieces that were in my head together, I knew everything had changed and this would be - I knew - I didn't know the full story then but I knew this was it. I thought - and she even went on to say. This was the beginning of child abduction by the State. She didn't actually use the word "Stolen Generation" but as soon as I read that I thought "This is it." This is the beginning of the Stolen Generations. And although - and in Judith Brett's quote - Judith Brett's reference there, in her references, she quotes from Patrick Wolfe, who he actually writes, "The 1886 Victorian Act marks the legislative onset of the Australia-wide policy of Aboriginal child abduction coordinated in 1937 but administered individually by the separate States, the victims of which would come to be known as the Stolen Generations. Despite its ostensively selective nature, the preferential targeting of whiter-skinned children, the policy was clearly aimed at the elimination of Aboriginal people as a whole. As Joseph Carrodus, Secretary of the Federal Department of the Interior, observed that the Sate delegates who assembled in Canberra in 1937 to devise a common Aboriginal policy, none of whom demurred, 'It would be desirable for us to deal first with the people of mixed blood. Ultimately, if history is repeated, the full-bloods will become half-caste'."

COMMISSIONER LOVETT: Can I just jump in. Thanks for that, Peter. I would like to ask counsel if we could have just a five-minute adjournment, if that's okay. Thank you. And we will come back in five minutes. Thank you.

<THE HEARING ADJOURNED AT 2.36 PM

<THE HEARING RESUMED AT 12.42 PM

CHAIR: Counsel, are we ready to resume.

MS FITZGERALD: Yes. Thank you Chair. We don't have a witness? Witness is here. Thank you, Chair. Peter, I wanted to go back and ask you some questions about the effect of the legislation which, as you have indicated, has been referred to as the Half-Caste Act and I ask you to step through how that - how the amendment, specifically that Alfred Deakin was responsible for introducing, resulted in children being taken away from their families.

MR SHARP: Well, I will have to read - to actually read it. But it is well-known that it was carried out that way and there is even evidence that in - there is evidence of welfare officers removing children who had both parents living because they said they knew that the intent of the Act was remove children from the influences and there is some pretty - of the - I can't remember the actual quote but it's in the very racist language at the time. I think it's also important to understand that in the 19th Century, even in the non-Indigenous community, a child was deemed an orphan if it did not have a father because women were seen as not being able to support children without a man in the family. I think I first learnt that in - Claire Wright did a series on -

MS FITZGERALD: I might just stop you there Peter.

MR SHARP: It was Dora Montifiore who was a - yes. Anyway.

MS FITZGERALD: I will just stop you there because I wanted to ask you whether you had any understanding of what happened to those children that were removed. Has your research given you any idea of what happened with removed children, where they went, what happened to them?

MR SHARP: They were taken away to orphanages, as I understand it. I mean, many different - or - no, that's not something I have researched, in particular, but I have heard, being a living - I have - I think I have got this right, there are others who can correct me if I'm wrong, but that Geelong has one of the highest populations of Stolen Generations because there were 13 orphanages in Geelong.

COMMISSIONER NORTH: Peter, can I ask you this: the Act you are speaking about is a notoriously racist Act and what you have said is you have got an ancestor who was closely connected with its passing. I just wonder what do you feel about that personally?

MR SHARP: Well, first of all, I was horrified to know that he had actually - when I first read it, the way - even the way Judith Brett wrote it in in the book, that he sponsored it, it sounded like - well - that he was actually - had the responsibility for passing it. But even in - even in her - as I read her book, I was horrified. But then she writes a page where she kind of justifies why he did it and that he didn't really have his heart in it. The clue to me that gave it away to me was that she said he did it because he wasn't a fighter. He had no emotional capacity for a lost cause however just. And by the time I had read to the end of the book, I thought, "Hang on, that doesn't quite - something doesn't add up", because that's what have exactly what he did in the course of Federation so I went back and I started digging deeper and what I knew believe is that he did it - it was entirely intentional. All its content and its consequences were deliberate, intentional, carefully worded to be - there is a whole story in how he got it through the parliament without alteration without being amended.

MS FITZGERALD: Yes. But just back to - Commissioner North's question really gets to the impact on you of this discovery. How did it make you feel when you discovered that?

MR SHARP: Well, I was horrified to start with just that he had anything to do with it at all. Then that he hadn't sort of pushed against it, that he hadn't, that seemed bad. But then it just got worse because suddenly I realised, "No, he actually meant this, this was deliberate", and - but, as I have written, it did affect - it was hugely - just - and I questioned whether I was right about it because I'm not a - you know, how come no-one else had ever come on this but -

MS FITZGERALD: On that, was it difficult for you to find this information about his role introducing the amendments? Was it hard for you to find?

MR SHARP: Actually, surprisingly not. And I actually got into Hansard - and I am really very inept at digital technology - but I managed to get straight into Hansard in three clicks and there it was and -

MS FITZGERALD: But this information that you have told today about Deakin is not commonly known. Would you agree that it was really three clicks hiding in plain sight?

MR SHARP: Yep. It's all on the public record. There is nothing in what I have found that is a family secret in family records that were hidden away in trunks under - nobody knew about this. And my - in the research I have done, I would - unless evidence is produced to the contrary, from December 16 1886, when it was reported in the Argus and The Age to 1989 when Bain Aptwood wrote about it, Deakin's name has never been publicly connected with this Act, and yet everybody knew - well, particularly, in the Indigenous community, the Half-Caste Act was notorious for all that time.

MS FITZGERALD: Do you accept it was known at the time it's been easy to find the whole time to an extent it has been intentionally forgotten?

MR SHARP: I think it was intentionally hidden. And I don't think it's been as easy to find. I mean, prior to this, to get to that Hansard, you would have to make appointments with the Parliamentary Library and go in with white gloves to know which - find the volume of Hansard to go and look at it. But historians did in pre-digital times. They did it but they were professional historians. I wouldn't have known how to do it. But thanks to Trove, and the technology, you can actually do it now.

MS FITZGERALD: Why is it important for non-Indigenous Victorians to look critically at their own family history?

MR SHARP: Well - well, this is - I mean, I don't know. I mean, many, many, many families - I thought - my family were all just - they came in the Gold Rush. They weren't part of the frontier massacres. This was a shock. I had no idea that this could have been possible. All the books I had read had said that Deakin was a supporter of Aboriginal rights but he was very clever at disguises and covers - covering - using - being able to do things under the cover of his reputation for higher principles and Judith Brett writes about that in her books, a wonderful description of his character.

MS FITZGERALD: Your hope will come from the truth-telling process that you have participated in in Victoria?

MR SHARP: The recognition that this did not - to dispel the myth that the Stolen Generations came about out of bungled mismanaged but well-intentioned policies and Acts that, yes, in hindsight, they appeared - appeared that they were wrong and everything. No. As I heard Commissioner Hunter once speaking to Larissa Behrendt on Speaking Out, she said the system is not broken, it is doing exactly what it was designed to do and that's the truth. This was a - the 1886 Act was - as Patrick Wolfe has said, its intention was the total elimination of Aboriginal culture and population.

It is really important for Deakin in his longer-term plan of white Australia, white Australia has always been perceived as being a result of the Immigration Restriction Act of keeping people out, but Deakin was very concerned that there would be an Indigenous non-white population, and it was really important also to show in the - he had a lot of - made various trips to London to deal with the colonial office and the British Government leading up to Federation and it was really important to him to be able to believe say, "Look, the numbers are going - always going down", and that's what he was - he was thinking ahead and the first step was taken in Victoria with the signing of the 1886 Act. He could just say overnight - not overnight, it was seven years down the track, he could say, "The numbers are now half what they were and they are not going to go up", and - and he was - and he could convince the colonial office that that was the case. They would look at the numbers, the board would count, because they were no longer counted.

MS FITZGERALD: Commissioners, I don't have any further questions. If any of the Commissioners have questions?

COMMISSIONER WALTER: I just want to reflect a little bit. The thing that comes from me is I'm thinking about those children, especially the girls who are in their families, they are in reserves, they are under surveillance, life is not good, but it's got some safety and to be then just removed and, you know, 15, 16 years old just on your own. It breaks my heart to think about them, you know, how many of them - I know that Welfare Act, that you are talking about, the one the Welfare Royal Commission talked about Aboriginal people having to living on the outskirts of the towns and the girls in prostitution and other things and it just - that was the real impact. I guess talking all about the Act, I'm just thinking of the lives that people had to lead because of that.

MR SHARP: Yes. Well, I think those stories are to be told by the descendants of those families and they have - are being told and are recorded and that's - I mean, in the end - I mean, there is evidence in the Royal Commission of 1887, there were witnesses who said it will not work. Absorption - Edward Ian Kerr, who I am sure is a familiar name, said - I could find the page and quote it. But he said absorption - he called it absorption, not assimilation, will not work. Ian Kerr didn't muck around. He was a straight speaker. Politically incorrect. He said, "Absorption will not work, try annihilation."

COMMISSIONER WALTER: Those children, those girls especially, who were caste out from their families, by denoting them as not Aboriginal anymore, they just were forgotten. They became non-people.

CHAIR: And ended up in domestic training, when it was possible.

COMMISSIONER HUNTER: Can I just add to that. Because I needed to understand. Because this Act is very - this is a very destructive and it's just decimated our people, this Act. So I just wanted to put a piece of the puzzle together. You can agree with me, if you like. But that 1886 Act enabled the expulsion of Aboriginal people from mixed descent, so the half-castes, aged from eight to 34 from the Aboriginal reserves. So if you were eight and then possibly - it wouldn't surprise me if there was younger - and your family is full-blood or parents, then get to stay on this reserve, and those children go to wherever. So then they are deemed - that is the start of the Stolen Generation. That is the start - and I just want to make the point that that - the devastation - that was so devastating and dehumanising for our people and I want to - this is hard stuff and I just want to thank you for coming and talking about this Act particularly because it has just decimated our people. So thank you for coming and discussing it.

MR SHARP: And the evidence is that because Victoria was sort of seen as politically progressive at the time, the Act - it was pretty easy for all the other States to say, "If Victoria can do that, we will do it too", and they took it up. And it is said -

look, I haven't done the - I haven't actually extracted - found and compared them but I have read that the New South Wales Act is almost verbatim the Victorian Act.

COMMISSIONER HUNTER: I think you are right. They say that it started here in Victoria I also don't have that legal nuance or understanding of where and how. I just wanted to say, you know, this is one of the most devastating Acts for our people and it is pretty tough stuff and, again, I will say to people look after yourselves particularly online if you are hearing it and my fellow Commissioners. This is hard stuff and this is the stuff that continues to cause harm today and it leads into today. So actually coming forward and researching your own family and caring, as well, that burden of knowing that is a lot. So I just wanted to thank you.

MR SHARP: I think, just to go on from what Commissioner North asked me about how it affected me, there came a time where I did move away from - move on from thinking - well, it wasn't a secret that had been kept in my - it wasn't a family secret. It was there. I found it all in the public record and that I'm absolutely certain that no-one in my family knew this story and I'm also certain that Deakin University didn't know it when it was founded. But what hit me, it wasn't long afterwards where I thought I feel more shame about this as a citizen of this country who has grown up in the - with all the benefits and the privileges of this land, which has been invaded and taken, and then not just invaded and taken and subdued, but then an attempt to eliminate entirely the Indigenous population.

I have asked the question: is there another instance in human history where an invader has attempted, after invading a continent, an entire continent, to eliminate the entire Indigenous population. I don't think there has. I stand corrected if there is. So it was as a citizen that I have - because this has gone - why was it not questioned? Why were we - I mean, even when I heard Archie Roach's story, I thought, what? He is younger than me. This is happening in Victoria. Why is this still going on? Because it's obviously not working. You know, it is not even achieving whatever was meant to be - what was it about? And it was the - the horror was, when I discovered what it really was about, you know, I mean, it was clear and I think we have to - all of us, who are non-Indigenous, have to - it's a collective responsibility. Nobody looked at it.

As Edward Kerr says in the 1877 Royal Commission, he says, "The fact is we have pretended but never really wished to save them from extermination", and I think we are still pretending. He goes on to say some other pretty crucial things that are hard-kiting facts but I think he was a straight speaker in many ways. He was a flawed individual but he saw it as it was, I think, and described it as it was.

COMMISSIONER LOVETT: I just want to say thanks for coming in today. I've been pretty quiet today. Normally I do ask a lot of questions. But just reflecting on my own family, my aunties and uncles who were stolen from their lands and of which many of them have now passed and put in these orphanages and treated horribly wrong. So thank you for coming forward and sharing your family's history

and encouraging also other people to come forward and engage in all the Yoorrook process or truth-telling more broadly as well.

But I'm just sitting at peace with thinking about my family right now and just, you know, thinking about all the stuff that they went through and also our people more broadly as well. I think it is really - you know, as Commissioner Hunter said, it's a massive day, brings up a lot for us, as the people, and as well the system is working perfectly as it was designed to do as well. Yes. Thanks very much for coming forward.

MR SHARP: Can I just respond to that to say, again, I want to emphasise, this is not my family's history. It's actually this State's history and this nation's history. It is not hidden away. It is not - this is Deakin as a public figure elected by - in a democracy and parliament voted on it. This is a collective history, not a family history. It didn't - yes.

MS FITZGERALD: Shall we adjourn until 2 pm?

CHAIR: Yes. Thank you. This commission is now adjourned until 2 o'clock. Thank you.

<THE HEARING ADJOURNED AT 1.06 PM

<THE HEARING RESUMED AT 2 PM

CHAIR: Counsel, are we ready?

MR GOODWIN: Yes. Thank you Chair.

CHAIR: This sitting of the Yoorrook Justice Commission has now resumed.

MR GOODWIN: Thank you, Chair. We now have the evidence of Dr Katrina Kell. Katrina, could you please introduce yourself to the commission?

DR KELL: My name is Katrina Kell and I'm a descendent of James Liddell (inaudible).

COMMISSIONER WALTER: Sorry, can I just check, is your microphone on?

DR KELL: No, it is not.

COMMISSIONER WALTER: Did you want to move it a bit forward just - - -

DR KELL: It is very quiet. I will just move it a bit closer. Is that better?

COMMISSIONER WALTER: Yes. That's much better. Thank you.

DR KELL: Would you like me to repeat that?

COMMISSIONER WALTER: If you would like to, that would be great.

DR KELL: My name is Katrina Kell and I'm a descendent of Captain James Liddell and he was the Captain of The Thistle that took the Henty family to Portland in Gunditjmara Country in 1834 where they stole land and set up farming. I'm from Whadjuk Noongar country in Western Australia and that's where I live and work. Yes. So I'm very grateful to have this opportunity to share these stories today of my family.

MR GOODWIN: I know Commissioner Hunter welcomed us to country this morning but I wanted to give you an opportunity to acknowledge country in your own words.

DR KELL: Yes. So I would like to acknowledge that the Wurundjeri people of the Kulin Nation, the Traditional Owners and custodians of unceded lands where we meet today, and I pay my respect to Elders, past, present and emerging. I also pay my respects to First Nations people who may be present today, in particular, Gunditjmara people and I acknowledge the invasive and illegal theft of Gunditjmara land that commenced in 1834, theft which my colonial ancestor helped to facilitate.

I also pay tribute to your courage, resilience and commitment in protecting your rightful lands, culture and law, and your continuing quest for the truth, reparation, injustice. I would also like to note that there are names of deceased persons mentioned in my submission. The deceased persons's names have been included for evidence and historical accuracy and I'm sincerely sorry for I had hurt or offend this may cause to First Nations people and I would also like to thank Commissioner Hunter for her Welcome to Country this morning. Thank you.

MR GOODWIN: Thank you, Katrina. Do you undertake to tell the truth to the Yoorrook Justice Commission today? Thank you. You have prepared a submission for the commission dated 17 August 2024 with six attachments. That's right? That's already been tendered Chair, this morning. Your submission focused on your descent from - or being a descendent of Captain James Donaldson Liddell who, as you mentioned, was the Captain of The Thistle which brought the Henty brothers to Gunditjmara Country where they took up land illegally.

If I can just bring up figure 1 of your submission. So that's a painting of The Thistle by artist Jack L Koskie that's included in your submission. You mentioned that you are a descendent of James Liddell. How did you discover that connection?

DR KELL: With the family. So we were told, from when we were very young, about Captain Liddell and that he was the Captain of the ship that took in, the family's stories it was the first plough. Not only to Victoria but to Australia. So there is, you know, quite a few inaccuracies in the family's stories but that is what we were raised on and there was a great deal of pride in this story. Just for information, I was

actually born in Scotland but my grandmother was Australian and that's where this family line goes back to in the 1820s when - yes.

MR GOODWIN: Your submission is very thorough regarding the history of James Liddell and you have done a lot of research into his background and his relationship with the Hentys, in particular. Could you please tell the Commissioners a little bit about James Liddell's background and how he came to Australia?

DR KELL: Yes. He was quite young when we came out here. He was only, I think, probably about 20 or 21 when he came out here. He had come from Alloa in Scotland. He was a Scotsman. Initially he was working on ships up and down the sort of New South Wales coast and, at the time, he started working for the Hentys was probably a few years, probably around 1829 or 1830, and, at that time, he was working for the Hentys on The Thistle going backwards and forwards between Launceston and the Swan River colony. It was on one of those journeys that he claims to have identified that the soil in Portland Bay would be ideal for farming and he claims to have been the one who actually identified that. Yes. So he was a young sea captain, mariner.

MR GOODWIN: And the Swan River colony, is that in Western Australia?

DR KELL: Yes, that's correct.

MR GOODWIN: So you are actually living quite close to a situation where your ancestor would have travelled?

DR KELL: Most definitely. And he was very much involved with the First Nation people there as well. There's stories which don't relate to what we are talking about today but have a lot of significance there as well. Yes.

MR GOODWIN: And you have mentioned his involvement in - well, in calling into Portland Bay during those travels and you have highlighted a number of the historical evidence from his own journals and memoranda in regards to calling into Portland Bay between Launceston and the Swan River colony. Can you explain a bit more about what you found out in your research about his responsibility for the Henty brothers arriving in Portland Bay?

DR KELL: Very much that he was aware that they were unhappy with the conditions in Western Australia in the Swan River colony. They felt the land there was not suitable for farming. They had also been - left one of the sons in Albany and so he was also in and out of that area as well. I think they felt it was a bit more favourable there but they were still very much on the lookout for somewhere else to set up their Merino farming, and he - depending on which account you believe, he claims he sort of called into the Portland Bay and there is two accounts. One is that he identified himself that the land there was suitable and that he dug up a sod of earth and took it back to Launceston where he showed the father, Thomas Henty, this soil and I think there is other accounts where one of the Hentys claims he was the one

who dug up the sod of soil and took it back on a - when he was actually in the company of Liddell. But Liddell claims it was when he was on his own, none of the Hentys were with him. And he also had spoken to William Dutton at the time and he had recommended that this would be a good place for farming as well. So there is - I don't know if that is a familiar story but that's what I have discovered. I think that is probably the closest to the truth. Yes.

MR GOODWIN: And there is a reason why - as you highlight in your submission, there is a reason why the Hentys were looking to move out of Launceston, as well to move out of Tasmania. Can you just explain to the Commissioners why that was the case?

DR KELL: That was due to the fact that they weren't able to get land free, basically, any more. They were going to have to pay for it, yes. So they were looking for other opportunities and - yes.

MR GOODWIN: And the land grants had been exhausted.

DR KELL: Exactly.

MR GOODWIN: There was Van Diemen's Land.

DR KELL: That's right, yes.

MR GOODWIN: So if you needed - if you wanted to get land you had to buy it.

DR KELL: You just had to get land or steal it.

MR GOODWIN: And so it seems they went down the latter route at Portland. And you mentioned William Dutton. So, as I understand it, around the time that James Liddell was calling at Portland Bay, a number of whalers, including William Dutton, had commenced waling on Gunditjmara Country. What was the nature of their activities as you know it at around that time in the early 1830s.

DR KELL: Well, they were catching the southern right whales from what I understand and there was also a lot of sealing as well, which I don't think Dutton was so much involved with that, but Liddell most certainly was, my ancestor, and he was dropping off whale boats and crews of sealers at all the different islands where they were harvesting seals and then he also felt that there would be good opportunities for whaling in Portland Bay. I think it's very difficult to confirm categorically whether the Hentys were actually whaling at that time but it certainly looks like they were as well at around that time, around 1833-34, there was certainly evidence that that was happening - was starting to happen. Yes.

MR GOODWIN: And there is some indication in your research that suggests that whaling was particularly important at that time because of gaining the oil from the tongues of whales and that was a common practice at the time in terms of - - -

DR KELL: Yes. Definitely. The tonguing, yes. And the work would be done on the beaches. And that was very much the case in Albany as well in Western Australia. So they would boil up their tongues and everything, extract oil, and it was quite lucrative. It was extremely lucrative. And the sealing was starting to slow down by this stage because they had harvested so much of the local populations which also had a huge impact on local Indigenous people as well. One of the things that I found most disturbing about my ancestors involvement with the sealing was that he would have absolutely been aware of the theft of Aboriginal women who were taken to the islands and used as slaves and various other - yes, prostitution - not prostitution, just sex slaves. So, you know, to know that he was aware of that and dropping off these crews, picking them up, it is a very uncomfortable. It sits very uncomfortably with me, that knowledge.

MR GOODWIN: The context of whaling on Gunditjmara Country is very important context for what we now know as the Convincing Ground Massacre. We have heard evidence about that massacre before the commission and commenced our evidence on land injustice at that very important sacred site. What's your - without having to go into detail, but just for everyone listening to this evidence, what's your understanding about what happened at what was called by Europeans as Convincing Ground?

DR KELL: I think - based on what I have discovered, I think it was to do with the whale and the fact that there was - a whale had come ashore and there was conflict between the whalers who were there, who believed it was their property, whereas the Gunditjmara people there - there had been some sort of discussion, from what I can understand, that, if they were on the beach they belonged to the Gunditjmara, and so there was a disagreement and there was a skirmish and there was some spears thrown, and then the whalers all ran off and got guns and started killing the Gunditjmara people who were there and it was a particular clan and apparently there were only two survivors and that's my understanding of what happened there.

What I also discovered is - it has been very hard to identify when this actually occurred and, based on things I have recently learnt, I think the Hentys, and my ancestor, may have actually been there at this point. But I can't say for sure but the dates all align and there is things in Liddell's memoranda that his daughter shared that had raised some very concerning questions about that particular visit to Portland Bay and - which I can go into more detail, if you need.

MR GOODWIN: Yes. So, in fact, your submission is quite thorough in terms of looking at some of the dates we understand from primary documents that James Liddell and the Hentys would have been in and around Portland Bay and I think I'm right in thinking that would have been around from mid-1833 to mid-1834.

DR KELL: Definitely, yes. Yes.

MR GOODWIN: And in terms of our understanding of when the Convincing Ground Massacre occurred, it's generally understood that that might have occurred at around the same time; am I right in saying that?

DR KELL: Yes. Yes. That seems to be the period, from what I have read, that they believe that's when this happened. And if you look at some of the accounts in Robinson's diaries and records, that certainly appears to be the case, because there's - different accounts have been given by various people. Some of the accounts say that the disagreement, what led to the massacre, was the theft of Aboriginal women but I personally think it was probably a combination and also the whale was hugely significant. Yes.

MR GOODWIN: And you mentioned briefly about James Liddell's potential knowledge or proximity to the events in some way. What has your research uncovered or what conclusions or hypotheses have you reached about his potential knowledge or proximity to the massacre?

DR KELL: Yes. So in his daughter's letter that she wrote to the newspaper where she shared, and directly quoted from this memoranda, he talks about having visited with the father, Thomas Henty, and I think another brother as well, one of the Hentys, and he was saying how - initially it is about how Thomas Henty said he thought the soil there did look good. So that kind of confirms Liddell's claim that he thought he was the one that had identified it. And he talks about how they had been picking up - he picked up whale boats and crews from various islands but the really interesting revelation is that they were apparently supposed to leave two whale boats at Portland Bay - and this is out of Liddell's mouth, this is his words - and then he said, "But we didn't leave them and I can't remember why." And as soon as I saw that, "I can't remember why", this is a man that kept very meticulous records, you would remember why you didn't leave whale boats, if that's what the plan was, and obviously it reveals that they were going to be waling.

The other thing is: my thoughts and my theories are - there is a couple of theories - they either witnessed the massacre, may have been involved with the massacre, or didn't want to be associated with it. So, therefore, remove whale boats and take them away so there is no question that they were part of it. So these are just theories but certainly could be the case.

MR GOODWIN: So eventually the Hentys moved permanently to Portland Bay and erected buildings and bought livestock on The Thistle and you have mentioned that James Liddell would have been responsible for a lot of those passages in terms of - as Master of The Thistle. In your research, you found a newspaper article in the Hamilton Spectator which was essentially an argument between William Dutton and James Liddell, on behalf of the Hentys, about who was the oldest colonist in Victoria. If we could go to attachment 6 of the submission - which is behind tab 7, Commissioners - so you can see the title of the article regarding who is the oldest colonist and then it follows that statutory declarations were provided to the paper from both William Dutton and James Liddell about who built buildings and was

living there permanently first. I just wanted to get a sense of your reaction as to what that dispute tells us about the attitudes at the time particularly about First People's ownership and relationship.

DR KELL: It tells us everything, doesn't it? You know, there was just not one mention of the original owners of the land and that's something that has continued right up until very recently. I was talking to someone recently about publication of the Henty journals. It was published in 1996 and in the dust jacket it talks about the Hentys and how they set up these wonderful farming principles in Portland. It talks about the new land, that this was a new land, it talks about how the southern right whales were decimated as a consequence of waling in that region. There is not one mention of the First Nations people from that area. But that was in the '90s, 1990s, published by University of Melbourne in conjunction with another publisher.

So, I mean, this is nothing - it is no surprises, really. It is really - it was just that was at attitude that prevailed. That, you know, basically, yes, "Let's pretend. Let's pretend there was no-one there. Let's pretend these people never existed. Let's pretend there was no culture." It was inconvenient. It was an inconvenient obstacle to taking over someone else's land, someone else's country.

MR GOODWIN: Commissioners, apologies, for your benefit, it is page 150 of the Almanac, which is on 0037 of the stamped copy. It is essentially the last four pages of the document. Without going into detail about the various - the two statutory declarations, they read as extremely competitive, essentially, about who owns the title as the so-called oldest colonist. What do you make of - or what's your reaction to the fact that there was even a dispute about who was the first colonist on the country?

DR KELL: Well, I think it's just apparent that, you know, it was just this desire to conquer, to conquest, to claim ownership of the land and I think, you know, it just seemed - to me, it seems very petty, to be quite honest, with the arguments, when you are talking about such a significant thing, you know, where there has been these terrible things happening to the original owners of the land and yet there is not one mention of them and then these people all arguing over who was the first, you know? It was all about trying to become someone important in terms of history. I think that's what it was. And even to this day, I think there is still questions marks between these - you know, whether it was Dutton, whether it was the Hentys. But, yeah, it is trying to really establish dynasties, essentially. Yes.

MR GOODWIN: A quite dark story that you have already alluded to regarding what's been uncovered in your research is that it's likely James Liddell also ferried who you have referred to as William Dutton's Aboriginal slave and so-called wife, Kalloongoo, between Portland and King Island. I know we have it in your submission but, to the extent that you feel comfortable, what do you know about that particular story?

DR KELL: I have been able to confirm that it was him. I did quite a bit of further research. He was Captain of The Thistle on that particular voyage. Dutton took over

the captaincy of The Thistle on the return voyage back to Portland for a period when Liddell was on leave. He had a new baby and obviously was taking time out in Launceston. So, yes, he did, for want of a better word, ferry Kalloongoo and drop her off at King Island and she was separated from her child. Whether - what I'm not sure about was whether the separation of the child occurred on that particular occasion. I suspect it probably did because Kalloongoo was then taken to - not Kalloongoo, her daughter, Sophia, was taken to Launceston and I have recently discovered she was actually raised within the Griffiths family, initially, but was probably more working as a servant for a lot of that time.

So, yes, that's a horrible story to have discovered, to know that he was involved with that and, you know, obviously carried out the orders to do this based on an early historian, who I don't have the name at my fingertips, but there was an account that that was something that the Hentys actually wanted to happen. They didn't approve of this relationship between Dutton and Kalloongoo and wanted her removed. And it is in the Henty diaries. There is actually an entry in the Henty diaries about that particular incident happening. So there is evidence of that. So it did occur.

I think latterly Tony Wright discovered that, based on his research, I think, Kalloongoo ended up somewhere quite different to King Island when she was, you know - according to her record - accounts, as well which she shared with Robinson, latterly, yes. So there is a lot of evidence about that particular chapter and it's very sad because it was, essentially - once again, it was a stolen child story where she had her child removed from her.

MR GOODWIN: Is it Joe Wiltshire that is the historian?

DR KELL: I think so.

MR GOODWIN: Of that material from the Henty diaries?

DR KELL: I'm not sure.

MR GOODWIN: You have highlighted that number of those - a number of materials and primary sources indicate how Kalloongoo was mistreated in that period. What does that tell us about the attitude towards Aboriginal women at that time?

DR KELL: It tells us everything. And she was originally abducted from her own country and taken to Kangaroo Island as a child where she witnessed some terrible things and probably - well, almost certainly would have experienced terrible things. And then she was bought - my understanding is she was bought by Hutton - Dutton. And he took her back to Portland Bay. And some call her his wife but essentially she was his slave and she claims he mistreated her terribly and would beat her and things like that. So she didn't have a good life with Dutton at all. And then she had a child with him, as we know, which he removed from her.

MR GOODWIN: Clearly, a focus of your submission is on the relationship between James Liddell and the Hentys, Thomas and his son. You have conducted some research about, in particular, George Robinson's reflections on the Hentys from his journals. What do you know about the Hentys who your ancestor would have known quite closely from your research into George Robinson's journals?

DR KELL: Yes. Well, he would have known them very well. He wouldn't just have known them. He worked for them many years. And in between journeys he would actually stay in Portland for quite lengthy periods of time. So that's obvious. He would have known what was happening. And the Hentys, out of - in their own words - and what they actually told Robinson - they basically viewed the Indigenous people, the people from that region, as barely human. Apologies for these terms but this is what they actually said. He claimed. And Robinson actually said that if people weren't supportive of their attitudes towards the Indigenous people, they would basically not have been accepted in that area.

There was a code of silence and Henty even said if someone, you know, raised a spear to him he would shoot them on-the-spot even if the noose was right next to his head. And they were talking in terms of, you know - it was just common practice to be shooting the Indigenous people in that area. There is lots of accounts in those journals about that. And so, you know, if Liddell was as close to them, as we know he was, he must have known about that and - yeah.

MR GOODWIN: And you highlight that even Robinson - upon Edward Henty saying to him that the local Traditional Owners had not visited the settlement of the Bay for some years, that Robinson's assessment of Henty's revelation was that, in this, they are wise. So it indicates that Robinson is making that assessment that it is a wise thing to stay away from.

DR KELL: Absolutely. Yes. He was horrified. And he actually - he said that - you know, he did not - he got a very cold welcome from the Hentys and he said that, you know, it was obvious anyone who had any concerns for the Indigenous people there, would not be welcome. They would not be welcome. Because there were things - obviously things happening there that shouldn't have happened. And the fact no-one came near there is pretty telling, isn't it, after what happened at the Convincing Ground.

MR GOODWIN: And as we have heard multiple times in evidence, even the fact it was called Convincing Ground -

DR KELL: Yes.

MR GOODWIN: - is (lost audio) of intent.

DR KELL: The interesting thing in the Henty diaries is they quite often refer to the Convincing Ground but there is never any context. It is just the Convincing Ground.

But they don't - so, once again, it is another exclusion. It is another hiding of something they were fully aware of.

MR GOODWIN: Given what you have said in your words about what James Liddell must have known, given the closeness of the relationship, how do you think that reflects on him and his legacy?

DR KELL: Very badly. Very badly. Because, you know, I can't think of how you could say anything else. I think it really does mar his legacy. Seriously. Because, you know, even if he didn't actively participate in any of these atrocities, in what were essentially genocidal activities, I feel you are just as guilty if you are just there and you are aware it is happening and just let it happen and don't intervene. But he - you know, he may well have participated in some of it. I don't know. One of the things one of Janet Liddell's letter was that he was always extremely reticent about talking about those days. He didn't want to talk about the early days. So that indicates a hiding, I think. There are things that perhaps happened that he did not want to talk about or share or discuss and probably, hopefully, had an element of shame about, or whether it was just - this was just this code of silence to continue on with his taking over of other people's land. Yes.

MR GOODWIN: Talking about that issue of shame, you have described your connection to James Liddell as inherited shame. What do you mean by that?

DR KELL: I mean, we like to take pride in our families, don't we, and of their achievements and I think it is an inherited shame because part of the shame is, even through our family stories, the fact that we didn't learn anything about this. We were never told anything about this. So there has been this intergenerational denial not passing down what has happened, what the truth is, and that's why I feel, once you reach a point of understanding in that you do realise what has happened about the past, you have a huge responsibility to share that story and get that truth out there. So it is an inherited shame and it is even more shameful if I have this knowledge now and I don't talk about it.

MR GOODWIN: And you mentioned, at the start of your evidence, learning about James Liddell of the sense of pride, family pride, in that connection. This might be an overly philosophical question but do you have any reflections on how that type of narrative gets constructed in terms of how we think about family history compared to when you dig deeper, like you have, and you find a different truth; why do you think that significant disconnect often happens?

DR KELL: I think I can give quite a specific example within my family because of the other side of that relationship of James Liddell. He married a convict ancestor and I have only recently discovered my great-great-great grandmother, Abby Desmond. Now, we, as a family, knew nothing about this woman. Absolutely nothing about her. So she had to change her name. She was never known by her true name after she married Liddell. So there was a huge amount of shame over this convict ancestor. And so by elevating the sea captain's story gave the family this

point of pride, I guess, at a time when having a convict ancestor was considered very shameful. Also, the family, certainly my side of the family, were quite working class. They didn't go on and acquire lots of property or do anything like that. My great-grandmother, she married an Englishman, and so the family was then taken back to England and they were quite impoverished and quite dire circumstances a lot of the time.

So I think this sea captain in the family was a point of trying to sound like, "We have got somebody to be proud of here." So I think there is that element in families, you know. If they're feeling a bit down-trodden, or whatever, sort of try and find somewhere in the family history that you can be proud of and then eventually you discover, "Hang on a minute, not much to be proud of there really. It is pretty sad."

MR GOODWIN: You mentioned that sense of responsibility to share the truth once you have known it. How do you go about fulfilling that responsibility? What do you feel like you need to do based on that sense of responsibility?

DR KELL: Talk about it. I am a writer. So if there is ways within my work I can write about it and talk about it in a way that's culturally safe and sensitive for Aboriginal people and First Nations people. That's what I would hope to do. I have done a little bit of that already in various ways but always in consultation with First Nations people before I do that and I think that's the way to go about things. So, I think, getting those stories out there, talking to people, sharing what I know as much as possible.

I have spoken to my family at length as well and, fortunately, every member I have spoken to is just very keen to share the truth. I have one family member, I'm not quite sure - I haven't spoken to yet and not sure what his reaction is going to be but, that's okay, we will cross that bridge when we come to it. I think some of the older members of the family who have passed would probably have struggled but I know my great-grandmother - there is another story in there about her positive relationship that she developed in Australia with a gentlemen who we might talk about in a minute, yes, which is a nice positive story that we have got there.

MR GOODWIN: Yes. And, in fact, that was exactly where I was going to go. I mean, clearly, the history of interaction between Aboriginal and non-Aboriginal Victorians is a complicated one and you mention in your submission that your great-grandmother, Barney Barber, had a friendship with an Aboriginal man called King Billy. Tell us a little bit about that story.

DR KELL: This has been a very beloved story, actually, that was passed down from my great-grandmother to her daughter, and then to my mother and then to me, and the rest of the family, and Barney Barber was actually Winifred Mabel Barber, but she was a tomboy and she was a very out going sort of Aussie girl, and she - when she was only about nine or 10, befriended or was befriended by a gentlemen called King Billy and King Billy, it turns out - I'm not quite sure how to pronounce his name but it was Willem Baa Nip who came from around the Geelong region.

I had to do a bit of date-checking to try to confirm whether it was him and because my great grandmother was living in Queenscliff at this time and he went to Queenscliff to the racetrack and had spent time in Queenscliff around the time that she claims that she knew him and he used to - from what I understand, he used to love sharing traditional knowledge and trying to keep culture alive and he taught Barney how to cook rabbits in the traditional way and she said how he would coat the rabbits in mud or clay and bake them over the coals and then remove the hide and the skin. She had very fond memories of this relationship.

Apparently, he was staying, as they put it, on their property but it would have been somewhere they were living at the time for some time. He actually stayed there. So that was our story about her positive experience.

MR GOODWIN: And you have actually found some historical material that refers to him, and apologies to the operators, I'm doing this without notice, but if we can go to attachment 5 to the annexure, it is NUT.0001.0921.0029. Sorry, it should be Attachment 4. If we can just focus on the first paragraph on the left column. This is tab 5 for the commissions. There is a paragraph that you found in the Queenscliff Sentinel which is equal parts entertaining and disturbing. "One of the last of a line of kings who used to be Monarchs of all they surveyed between Geelong and Colac" - notice the past tense, "Used to be" - "King Billy arrived from Geelong on Wednesday last, so as to grace the Queenscliff racecourse with his presence, His Royal Highness travelled in cog and barefoot." What's your reaction to reading that about King Billy. This is 1884. What does it tell us about the attitudes of the day?

DR KELL: Patronising, isn't it? Yes. It's horrible the way they have sort of described him. And, yeah, just - yeah, very disrespectful, I think, it struck me, it seemed very disrespectful and almost making the joke out of him. And, clearly, he was very well-respected and honoured man within his own people. And, certainly, the story that was passed down by my great-grandmother is that how she remembered him too. She had a great deal of affection and respect for him. But, yes, that's not unusual, sadly. That is how - I have, at various times, come across some horrible newspaper articles describing Indigenous people and even when I was doing my PhD, I came across the experience of people around Lake Condah, I came across a newspaper article where it was describing two motorcyclists who had came across a travelling family who were on - they had actually left the mission and were walking, because they preferred to be away from the mission because they didn't like it, and the way they described these people, the father and his wife and the daughters, it was horrible, the language they used. But yet, in between all of that, the wife, the matriarch of this family, challenged these men, these motorcyclists, and she actually said - they told her where they had been and she said, "Do you know that is" - she gave the name, "That's so and so's country, that's our country, you should be paying rent up there", and things like that. She was really feisty - from the woman who really - yes. She really challenged them. That was back in the very early 20th Century that that article came out. So interesting. Very interesting.

MR GOODWIN: In terms of those stories about James Liddell, about your great-grandmother, Barney Barber, about all of the various things that those relationships tell us or that history tells us, how do you grapple with reconciling those stories as a descendent in terms of both the dark and the light, if I can put it that way, or the darker or lighter elements of our histories. How do you, as a descendent, grapple with?

DR KELL: Grapple is a good word, actually. It is something I have to grapple with a lot. I think it basically tells a story of our family because, I mean, it is like a lot of families. There is a lot of stories that you were told for reasons and there is others that you were not told for reasons. I think we have to probably, particularly in Victoria here but also around Australia, we have to look at all those stories and for myself, personally, the only way I can grapple with it is to face it. Face it and accept it. Feel that sense of shame and disappointment. I think disappointment is a huge part of it. Very disappointed to discover this about my ancestors but, at the same time, thinking about what can I do now to try and make a difference, if that's possible. Yes.

MR GOODWIN: And you said a little earlier in terms of what you do now with that story, you made the point that you want to do so in consultation with First Peoples affected by those stories when you think about telling those stories or sharing those truths; why that is important to you?

DR KELL: Well, it's just the right thing to do. I mean, it is essential. I mean, how can you tell any story if you are just telling it from one side and it's respectful. Because, I mean, my ancestors have not been impacted particularly in any way by this story, whereas people from the Portland region, Gunditjmara people, and I'm sure there are other First Nation people as well, have been impacted. So, of course, the first thing you have to do is speak and seek consultation and discussion and feel happy with - feel about it. It is not just my ancestors. More importantly, it is First Nations People's story. And I think there is a lot of sort of information now available to help people in a way that is culturally safe and sensitive. I don't think anyone has the right to just barge in and tell other people's stories. I mean, I've got my story but my story is so interconnected with your story.

MR GOODWIN: If I can go to - if you have your submission in front of you, if you go to the last page of the submission and in terms of conclusion. So if we can bring that up, it's the last page of the submission. Could you please read out that final paragraph to the Commissioners.

DR KELL: Yes. Sure. "Researching and critically analysing my ancestor's role in facilitating the theft of Gunditjmara land and the abhorrent treatment of Aboriginal people in southwestern Victoria has been confronting but also cathartic. I believe all non-Indigenous Australians must face this nation's violent past with honest and critical eyes. We must contribute to the truth-telling process and ensure there is justice and reparation for all First Nations Peoples by acknowledging the crimes committed by our colonial ancestors. It is also vital that the truth about Australia's

frontier wars is included in the Australian curriculum and fully recognised and honoured at the Australian War Memorial."

MR GOODWIN: Why do you think it is important for all non-Indigenous Australians to face the nation's violent past with honest and critical eyes, in your words?

DR KELL: Because that is who we are. That is what this nation is and if non-Indigenous Australians aren't prepared to accept that, we will never ever be mature as a nation, or be an equitable nation, or a nation that can feel proud of itself. While these stories are hidden and not shared and the truth is denied, how can you call yourself a nation in this day and age? You know, it's just vital. It is absolutely vital and it has to start very, very young. It needs to be there right from as soon as young children are able to understand in a way that they can actually absorb that information. They need to know that's the history of this land. And we are only new here on Indigenous Australians. We have only been here for just over a couple hundred years and this is the world's oldest living culture. So that's something to be extremely proud of.

You know, if we want to be able to hold our heads high and be part of that story, we need to own up and face what's really happened here and I don't think that's really been done very well up until this point. So this truth-telling process is a wonderful way of beginning that and, hopefully, that will spread around the whole of Australia. Yes.

MR GOODWIN: And just reflecting on a question that Commissioner Lovett asked earlier today, to people that would say, "Well, let's just leave the past in the past, whatever it might be", why is understanding the events of the past important for today and also the impact of those events on - or the impact that those events continue to happen - continue to have on our country and, particularly, our First Peoples.

DR KELL: Yes. And I think that's why they are still continuing because, yes, if you just leave things in the past, it is like - the only way I can sort of really - it is just like having a boil that is just getting bigger and bigger and full of horrible things that are just going to cause more and more problems and, unless you lance that boil and give it a chance to clear and clean and get the truth out there, out in the open, give it some oxygen so that people can face it, accept it and make the changes that are absolutely necessary for First Nations people to be able to flourish in their own lands, otherwise nothing will change. Nothing will change. And I think we are just in a nation that just does that, just likes to pretend all these things haven't happened. It is time for that to change.

MR GOODWIN: And a part of that change, as you see it, that you recognise in your conclusion is to change the Australian curriculum, in particular, around learning the truth of Australia's frontier wars. What kind of changes in the curriculum would you like to see happen?

DR KELL: I think if you bring First Nations people into it from the get-go. So they're actually designing that curriculum and making sure that it is telling things from your perspective, you know, and if - at the moment, there is a lot of information in the school curriculum about culture, about Aboriginal culture, art, those sort of things, but there is very little about the frontier wars and there is wonderful ways that that can be done. I did a beautiful project some years ago in Western Australia with Whadjuk Noongar Elder Trevor Wally and Ashleigh Collard, who is a Noongar artist, and it was called Our Story Islands, and we got quite a bit of push-back from the school. But it was a special arts project and we took the students to Wadjemup, Rottnest Island. We took the year 6s and 7s over there and they normally used to take them over for a snorkelling expedition but we took them to the quad and that is where so many Aboriginal men from all around Western Australia were taken and many, many died in horrible circumstances, and we showed them the conditions that these men were kept in, told them the stories of what had happened there.

These children went away and they went and they wrote stories about what they had learnt. They were so moved and opened - their hearts were opened. They wanted to know more. They just wanted to learn more. And with the younger kids, and Trevor and Ashleigh did a lot of beautiful work with art and culture and sharing stories about animals and everything, and it was just that beautiful engagement. If you could see that happening, you know, all around the country, I think you would see much more rapid change. Like I say, it was a challenging project because there were a lot of the teachers were not happy but we sort of pushed through and - yes.

MR GOODWIN: And did some of those teachers see the worth in that type of -

DR KELL: Some did, yes. Definitely. Absolutely.

MR GOODWIN: Just some final questions from me just to foreshadow, in case the Commissioners have any of their own, what inspired you personally to provide your submission to the Yoorrook Justice Commission and to appear to give evidence before the Commissioners?

DR KELL: I have to be honest, it was Commissioner Lovett. I saw your article in The Guardian and, when I was reading it, I could see the link said between my family history and what had happened to your people and so I reached out and that's how it all began. I wasn't sure how I would be received but I was very grateful that you were open to hearing about my family history and what - the possibility of sharing some truths that might be helpful in some way. Yes.

MR GOODWIN: And what would you say to other non-Aboriginal people, particularly people with connections to Victoria or who are in Victoria, to encourage them to explore their family histories and the history of the land they are connected to in order to uncover its Indigenous history, as confronting as though discoveries might be?

DR KELL: I think to not be afraid, not to be afraid, and to accept - I mean, history is what it is. You know, just accept that there could be things that you will discover that you are not happy about, that you are disappointed to learn that your ancestors have been involved with, but to think about it as a duty of care to First Nations people and to this country and to this nation and making it an honest nation that you can actually feel proud of. Because it's very hard to feel proud of Australia a lot of the time because of this history and the fact that it hasn't been addressed. I mean, I was born in Scotland but I feel very much Australian because of my family heritage and I would like to feel a lot more pride and, you know, not just to see tokenistic sort of band-aids being applied right, left and centre. You know, real genuine, digging deep, and not to be afraid of doing that. See it as a very important part of being an Australian, yes. That's my thoughts on it.

MR GOODWIN: Commissioners, those are my questions. If you have any questions.

COMMISSIONER LOVETT: I asked this question of Susannah Henty when she came and provided evidence here as well. Is there anything further or anything you would like to say to the Gunditjmara people in the audience here but also listening in that you would like to share with them here right now?

DR KELL: Yes. I would like to say how sorry I am. Deeply genuinely sorry. That this is something that my - this loss of land, this theft of land that you have experienced, the genocide, the terrible atrocities that have been inflicted on you, and that my ancestor was clearly aware of that and very likely a part of that. I really am very sorry and would never have wished that on you. You know, I just - and I would like to do whatever I can to making a difference.

COMMISSIONER LOVETT: No further questions from me. Thank you, chair.

CHAIR: Thank you very much, Katrina. Very thoughtful presentation. Very informed and very open and honest. Thank you so much for that. I like that you refer also to the lack of history of this country in the curriculum. This is one of the problems. That there is no opportunity for learning through schooling. And also the point about the war memorial. Now, we're expected to share Australia Day and yet we are excluded from where our people went and fought for this country. There is such anomalies in the thinking of white Australia. Thank you for your presentation.

COMMISSIONER LOVETT: One other thing, just in relation to King Billy, he also has got ties to Gunditjmara country. The King Billy they are referring to from Geelong is actually originally from Gunditjmara Country.

DR KELL: Interesting.

COMMISSIONER LOVETT: They are Aboriginal ancestors.

CHAIR: I would just like to thank you all. Thank you all for being here today and also thank all three witnesses for being interesting and the full contribution that you have made. Very hard to hear some of it but it's not new to us. It is just sad that we have this continuing story. But I hope that people understand, who are watching and listening, and here today, that there is still an opportunity to take part in truth-telling. We need to have all Victorians come forward and share the burden of this truth-telling, if that's possible, but I thank everybody that has come before us so far and I thank the people that are watching today. I also welcome the way in which everybody spoke today openly and frankly to us and I like the idea that you seem to feel reasonably comfortable before us. I think that's really important that people know that. Yoorrook is still taking submissions and so, as I just said, we invite all Victorians to come forward and share their truths. Do you want to say anything?

COMMISSIONER HUNTER: Just a reminder for people to look after themselves after hearing today's evidence, which was hard to hear, so if you are affected by the content and would like support, please contact 13YARN on 13 92 76 or Lifeline on 13 11 14.

CHAIR: I will close the session of the Yoorrook Justice Commission. Thank you. Thank you, counsel.

MR GOODWIN: Thank you, Chair.

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